



THE
TRIAL
OF
JAMES STUART, ESQ.

YOUNGER OF DUNEARN,

BEFORE THE

High Court of Justiciary,

AT EDINBURGH,

ON MONDAY, JUNE 10. 1822.

Taken in Short Hand.

WITH AN APPENDIX OF DOCUMENTS.

SECOND EDITION.

EDINBURGH:

PRINTED FOR ARCHIBALD CONSTABLE AND CO. EDINBURGH;
HURST, ROBINSON, AND CO. AND JAMES RIDGWAY,
LONDON.

1822.

* * * This Account of Mr STUART's Trial has been Prepared under the Direction of his Friends, and in a way which enables the Publishers to state, that the utmost reliance may be placed on its Completeness and Accuracy.

Printed by George Ramsay and Company.

CONTENTS.

K
39
5931
1822

PRELIMINARY PROCEEDINGS.

Indictment	Page 1
List of Witnesses for Prosecution	3
List of Assize	5
Documents referred to in the Indictment.	
Letter of Sir Alexander Boswell	6
Whig Song	ib.
Letter signed Ignotus	8
Character of Mr Perry	9
Petition of James Stuart, Esq.	11
Answers for the Lord Advocate	13
Examination of Witnesses as to Productions	15
Defences for Mr Stuart against the Indictment	19

TRIAL.

Mr Cockburn's Speech for the Pannel	22
Evidence for the Crown	44
Evidence for the Defence	88
Lord Advocate's Speech	131
Mr Jeffrey's Speech for the Pannel	135
Lord Justice-Clerk's Charge	171
Verdict of the Jury	185

APPENDIX.

No. 1. Extract, Letter from Lord Chief Commissioner to Mr Stuart	Page 1
2. Do. do. do.	ib.
3. Resolutions of a General Meeting of the Noblemen, Freeholders, &c. Western District of Fifeshire	2
4. Letter, the Earl of Kellie to Mr Stuart	8
5. Extract from an Article in the first number of the Glasgow Sentinel, entitled, "Mr James Stuart and the Lord Advocate."	ib.
6. Extracts from the Answers for Robert Alexander and William Borthwick to Mr Stuart's Condescendence	10
7. Letter signed "Mark Tod."	11
8. "The late Lieutenant James Stuart."	14
9. Letter, Sir Alexander Boswell to Mr Maconochie	15
10. Letter, Mr Stuart to Mr Gibson	17
11. Ditto to ditto	ib.
12. Note from Mr Stuart to his Excellency Sir Charles Stuart	18
13. List of Witnesses on the part of the Pannel	19
14. Interlocutor of Relevancy	20

TRIAL

OF

JAMES STUART, Esq.

PRELIMINARY PROCEEDINGS.

ON the 25th of May 1822, a Citation was left at Mr STUART's house, No. 2, North Charlotte Street, Edinburgh, charging him to appear before the High Court of Justiciary to be held at Edinburgh on Monday, the 10th of June 1822, at ten o'Clock forenoon, to underlie the Law for the crime of Murder, on the following indictment :

“ JAMES STUART, Clerk to the Signet, lately residing in Charlotte Street of Edinburgh, you are Indicted and Accused at the instance of SIR WILLIAM RAE of St Catharines, Baronet, his Majesty's Advocate, for his Majesty's interest : That albeit by the laws of this, and of every other well governed realm, Murder is a crime of an heinous nature, and severely punishable : Yet true it is and of verity, that you the said James Stuart are guilty of the said crime, actor, or art and part : In so far as you the said James Stuart, having conceived malice and ill-will against the late SIR ALEXANDER BOSWELL of Auchinleck, Baronet, and having formed the unlawful design of challenging the said Sir Alexander Boswell, and others of the lieges, to fight a duel, or duels, you did, upon the 9th, or one or other of the days of March 1822, in order to enable you the better to accomplish your said unlawful design, repair to Glasgow to obtain, through the medium of William Murray Borthwick formerly one of the proprietors or printers of the newspaper called the Glasgow Sentinel, and then a prisoner in the jail of Glasgow, the manuscripts of sundry articles which had been published in the said newspaper, and other papers and documents connected with said newspaper, which were then in the premises

in Nelson Street of Glasgow occupied by Robert Alexander, editor and proprietor of the said newspaper, and in the lawful possession and custody of the said Robert Alexander; and the said William Murray Borthwick having been liberated from jail, as arranged and concerted by or with you, and having, on the 11th, or one or other of the days of the said month of March, carried, or caused to be carried, away from the said premises in Nelson Street of Glasgow sundry writings, the property, or in the lawful possession of the said Robert Alexander; and having brought, or caused to be brought, the said writings to the Tontine Inn or Hotel in Glasgow, where you then was, you did thereby obtain access to the said writings: And having found, or pretended to have found among them, some writings holograph of the said Sir Alexander Boswell, you did wickedly and maliciously challenge the said Sir Alexander Boswell to fight a duel with you: and a time and place of meeting having been concerted, you did, upon Tuesday the 26th day of March 1822, or upon one or other of the days of that month, or of February immediately preceding, or of April immediately following, upon the farm of Balbarton, in the shire of Fife, a little to the northward of the road from the village of Auchtertool to the burgh of Kirkaldy, and about three quarters of a mile or thereby distant from the said village of Auchtertool, in the said shire, wickedly and maliciously discharge at the said Sir Alexander Boswell a pistol loaded with ball, whereby the said Sir Alexander Boswell was mortally wounded, the ball having entered near the root of the neck on the right side, and shattered the collar bone, of which mortal wound the said Sir Alexander Boswell died in the course of the next day, and was thus murdered by you the said James Stuart: And you the said James Stuart, conscious of your guilt in the premises, did abscond and flee from justice: And a letter, bearing to be dated 'Auchinleck, Novr. 7th 1821,' and to be subscribed, 'Alexander Boswell;' as also a writing, entitled 'Whig Song,' and addressed on the back, 'For Mr 'Alexander, Sentinel Office Glasgow;' a letter or writing, bearing to be dated 'Dumbarton, Decr. 17th 1821,' subscribed 'Ignotus;' and a writing entitled 'James Perry, Esqr. 'late proprietor and editor of the Morning Chronicle,' and addressed on the back 'Mr Alexander, Sentinel Office, 'Glasgow,' being all to be used in evidence against you at your trial, will be lodged in due time in the hands of the Clerk of the High Court of Justiciary, before which you are to be tried, that you may have an opportunity of seeing the

same: At least, time and place above libelled, the said Sir Alexander Boswell was murdered; and you the said James Stuart are guilty thereof, actor, or art and part. All which, or part thereof, being found proven by the verdict of an Assize, before the Lord Justice-General, the Lord Justice-Clerk, and Lords Commissioners of Justiciary, you the said James Stuart Ought to be punished with the pains of law, to deter others from committing the like crimes in all time coming.

DUNN. M'NEILL, *A. D.*

LIST OF WITNESSES.

- 1 James Earl of Rosslyn, now or lately residing at Dysart House, parish of Dysart, in the shire of Fife.
- 2 John Douglas of Lockerby, now or lately residing in Shandwick place of Edinburgh.
- 3 James Brougham, barrister at law, Lincoln's Inn Fields, London.
- 4 George Wood, surgeon in Edinburgh.
- 5 Robert Liston, now or lately surgeon in Edinburgh.
- 6 James Brown Johnston, now or lately physician in Kirkaldy, in the shire of Fife.
- 7 Dr John Thomson, professor of military surgery in Edinburgh.
- 8 Alexander Boswell, writer to the signet, now or lately residing in Edinburgh.
- 9 John Waugh Brougham, wine merchant in Edinburgh.
- 10 Andrew Watt, now or lately farmer at Balbarton, in the parish of Kinghorn, and shire of Fife.
- 11 David Blair, now or lately apprentice to, and residing with Peter Moyes, smith at Baidler toll-bar, in the parish of Kinghorn, and shire of Fife.
- 12 The said Peter Moyes.
- 13 William M'Kenzie, now or lately coachman to Claud Irvine Boswell, lately one of the Senators of the College of Justice, and now or lately residing at Balmuto House, in the parish of Kinghorn, and shire of Fife.
- 14 Alexander Struthers, now or lately butler to the said Claud Irvine Boswell.
- 15 William Spalding, writer in Edinburgh, now or lately residing in Pitt Street, Edinburgh, and now or lately in the employment of Alexander Young, Roger Ayton, and Robert Rutherford, or one or other of them, writers to the signet in Edinburgh.

- 16 William Henderson, now or lately writer in Hamilton, in the county of Lanark.
- 17 Felix Dougharty, now or lately clerk of the said William Henderson, and now or lately residing in or near Hamilton aforesaid.
- 18 Loudon Robertson, lately compositor in the Glasgow Sentinel Office, Nelson Street, Glasgow, and now or lately residing in Dundee.
- 19 Alexander Ure, now or lately writer in Glasgow.
- 20 William Bankhead, now or lately clerk of the said Alexander Ure.
- 21 Adam Duff, sheriff-depute of the shire of Edinburgh.
- 22 James Currie, now or lately clerk in the sheriff-clerk's office, Edinburgh.
- 23 Robert Bankhead, now or lately waiter in the Tontine Inn or Hotel of Glasgow.
- 24 William M'Comb, now or lately waiter or boots in the said Tontine Inn of Glasgow.
- 25 Robert Anderson, waiter, now or lately residing in Gallowgate of Glasgow.
- 26 William Scott, now or lately waiter in the Tontine Inn or Hotel of Glasgow.
- 27 Robert Alexander, now or lately editor and proprietor of the Glasgow Sentinel, Nelson Street, Glasgow.
- 28 David Alexander, now or lately clerk of the said Robert Alexander.
- 29 William Richardson, now or lately compositor in the Glasgow Sentinel Office, Nelson Street, Glasgow.
- 30 William Miller, now or lately in the employment of the said Robert Alexander in the Glasgow Sentinel Office aforesaid.
- 31 John Wilson, now or lately compositor in the Glasgow Sentinel Office aforesaid.
- 32 Alexander M'Glashan, now or lately compositor in the Glasgow Sentinel Office aforesaid.
- 33 William Home Lizars, engraver, James's Square, Edinburgh.
- 34 Thomas Clerk, engraver, High Street, Edinburgh.
- 35 James Walker, tutor to Sir James Boswell, Bart. of Auchinleck, now or lately residing at Wellwood Lodge, parish of St Cuthberts, and county of Edinburgh.
- 36 Miss Janet Theresa Boswell, daughter of the deceased Sir Alexander Boswell of Auchinleck, Bart. now or lately residing at Wellwood Lodge aforesaid.

DUNN. M'NEILL, A. D.

LIST OF ASSIZE.

County of Edinburgh.

- John Borthwick of Crookstone.
 John Pringle of Symington.
 Thomas Adinston of Carcant.
 William Pagan of Linburn.
 5 James Forrest of Comiston.
 John Wauchope of Edmonstone.
 Sir Alexander Charles Maitland Gibson of Cliftonhall,
 Bart.
 Sir John Hope of Craighall, Bart.
 James Watson of Saughton.
 10 George Reid of Rathobank.
 John Inglis of Auchindinny.
 James Haig of Lochrin.
 John Alexander Higgins of Neuck.
 John Thomson of Burnhouse.

Haddingtonshire.

- 15 William Hunter of Tynefield.
 John Anderson of Whitburgh.
 William Aitchison younger of Drummorie.
 Hugh Turnbull of Branxton.
 James Balfour of Whittinghame.

County of Linlithgow.

- 20 Sir James Dalrymple, Bart. of Binns.
 Gabriel Hamilton Dundas of Duddingstone.
 James Dundas of Dundas.
 Lieutenant-Colonel Andrew Gillon of Wallhouse.
 Alexander Learmonth of Crossflats.

City of Edinburgh.

- 25 David Brown, Clothier in Edinburgh.
 David Murray, spirit dealer there.
 Robert Paterson, ironmonger there.
 John Milne, ironmonger there.
 George Callum, tinsmith there.
 30 Adam Elder, carver and gilder there.
 William Rodgers, haberdasher there.
 Andrew Kerr, upholsterer there.
 Patrick Crichton, coachmaker there.
 Robert Stevenson, engineer there.
 35 John Leitch, clothier there.

John Hill, clothier there.

James Scrimzeour, cabinet-maker there.

Thomas Wilkie, cabinet-maker, Queen's Place.

Town of Leith.

Thomas Macritchie, wine-merchant in Leith.

45 John Somerville, tanner there.

James Veitch, brewer there.

James Allan, wine-merchant there.

Mathew Smellie, writer there.

Peter Latta Wilson, merchant there.

45 William Telfer, merchant there.

GEO. FERGUSSON.

AD. GILLIES.

ARCHD. CAMPBELL.

The writings founded on in the Indictment are of the following tenor :

SIR,

Auchinleck, Nov. 17th 1821.

A friend of mine, having recommended the *Sentinel*, and having the satisfaction to see it termed the "Phoenix of the Beacon" in a copy of the Scotsman, which the same friend has sent me, I beg that you will have the goodness to order a copy of the *Sentinel* to be sent addressed

Sir A. Boswell of Auchinleck, Mauchline.

I am, Sir, your obedient Servant,
ALEXANDER BOSWELL.

The Editor of the Sentinel, Glasgow.

WHIG SONG,

Supposed to be written by one of the *James's*, certainly not by King James the I. or King James the V. but probably by one of the house of Stuart.

TUNE—*Sheriff Muir.*

THERE's some say that they're Whigs,
And some say that we're Whigs,
And some say there's nae Whigs ava, man ;
But ae thing I'm sure,
A pauky Whig do-er
'S the Whig that out-whiggifies a', man.

Chorus—And they crack and we tak,
And they tak and we crack,
And we tak and they crack awa', man.

For *conscience* the *auld* Whigs
 War *sterlin'* and bauld Whigs,
 And gied their oppressors a claw, man ;
 But *now* Whigs for *sillar*,
 (Their calf on the Pillar),
 Ken nought about conscience ava, man.
 And they crack and we tak, &c.

The de'il took the lawyer,
 And left the poor sawyer,
 He was na a mouse to his paw, man ;
 Oure straught was his mark, man ;
 But a Whig Signet Clerk, man,
 Can ony thing, ony way thraw, man.
 And they crack and we tak, &c.

They rant about Freedom,
 But when ye hae fee'd 'em,
 Cry het or cry cauld, and they'll blaw, man ;
 Tak him maist rampagant,
 And mak him King's agent,
 And hech ! how his fury will fa', man !
 And they crack and we tak, &c.

Ther's stot-feeder Stuart,
 Kent for that fat-cow—art,
 How glegly he kicks ony ba, man ;
 And Gibson, lang chiel, man,
 Whase height might serve weel, man,
 To read his ain name on a wa', man.
 And they crack and we tak, &c.

Your knights o' the pen, man,
 Are a' *gentlemen*, man,
 Ilk *body's* a *limb* o' the law, man ;
 Tacks, bonds, precognitions,
 Bills, wills, and petitions,
 And *ought* but a *trigger* some draw, man.
 And they crack and we tak, &c.

Sae foul fa' backbiters,
 Wha rin down sic wriers,
 Wha fatten sae brave and sae bra, man ;
 Ilk Whiggish believer,
 Ilk privileged riever,
 Come join in a hearty huzza, man !
 For they crack and we tak, &c.

Addressed on the back thus—

For Mr Alexander, Sentinel Office, Glasgow.

TO THE EDITOR.

SIR,

Dumbarton, Dec. 17, 1821.

AFTER the license which we have all remarked, in the paper devoted to what are called the Whigs, and which, with becoming forbearance, was suffered to pass with impunity, I regret to see, by your paper, that the vindictive spirit of that party has been directed to an article in your paper, and that you are thereby invited to partake of that luxurious boon of the Legislature—a Jury Court Trial.

Much has been said about *personality*, but something may yet be said. If you had been base enough to pry into the *private life* of any *private* individual, and had dragged the result of unworthy research before the public, there are not words adequate to express the reprobation which such conduct must have merited. Of this, however, I need not say that I acquit you; for no one accuses you, and I feel confident that you are incapable of so reprehensible an act.

But while, by the concurrent admission of all men, those who press forward as public men, or notorious men, subject themselves to public animadversion, your error must be in the choice of your subject, and that may be serious or trivial.

You are prosecuted, it seems, by Mr James Stuart of Dunearn, once, certainly, a private individual, but a man now known to us, because he has bustled out of his element. If, therefore, you had held up to public ridicule Mr James Stuart, as an itinerant orator from county to county, and from meeting to meeting, who could have blamed you? Every *public performer* subjects himself to criticism—orators as well as players. Orator Hunt has had it, why should not Orator Stuart? Orator Hunt, after threatening to thrash the *lesser* man, Mr Morley of the British Hotel, showed, in the cant language, the white feather, and *refused to fight him*, and was deservedly stigmatized and laughed at. If Mr Stuart had done this, the parallel would have been perfect.

But, Sir, you are dragged before this purse-squeezing Jury Court, I am told, because, in reliance on the much advocated liberty of the press, and looking to the practice of the Whig papers, and particularly that pure jewel the Scotsman, you have ventured to repeat, what I am also told must have been well known to Mr James Stuart, was as currently the topic of general conversation in Edinburgh as any subject which interests the many, either from its gravity or its absurdity. If I am not misinformed, and if utterance is

publication, he might have selected from coffeehouses, or clubs, some individual whose *dimensions* might have been unobjectionable, (if other circumstances might also be equally so), and, on that chosen individual, by judicious management, might have rubbed himself again into brilliancy. But he has judged otherwise, and has selected you, MR SENTINEL, for his Whiggish vengeance, and summons you to lists where the winner gains no *honour*, and the loser, though he may lose much, may incur no *disgrace*. Beaten at their own weapons, like discomfited bullies, they are the first to call the watch; and, without inquiry as to provocation, or who struck the first blow, he who struck the blow *that is noticed* must go before his Worship.

I approve of the determined stand which you have made against Whig and Radical tyranny over the press; and if, without injuring your proud spirit, I may express regret, I must lament the annoyance and expense to which you are subjected for that which did not originate with you, for you have simply echoed the general talk. As you have stood boldly forward on loyal principles, I feel confident that this lawsuit will not damp your energies, that your own courage will bear you through, and that your cause will be supported by many a good friend, against the virulence of a party. I beg leave to offer, as one stud for a sevenfold shield against Whig assaults, my hearty subscription of five pounds; and I shall be glad to hear that there is a goodly increase before a week is over.

I am, Sir, your constant reader,

IGNOTUS.

JAMES PERRY, ESQ.

LATE PROPRIETOR AND EDITOR OF THE MORNING
CHRONICLE.

It has been our painful duty, in common with our fellow journalists, to announce the death of a man, who, for a long period, had so distinguished a share in the political paper warfare of the country. "A generous Briton wars not with the dead." With Mr Perry, as a private individual, who could war? The keenness of invective was confined to his journal, for, in private life, he acknowledged no distinctions of party; and, so late as the year 1820, the writer of this article, whose political opinions were as much in opposition to those of Mr Perry as the two poles

are to each other, passed a happy day at his hospitable table in company with Lord Erskine, who is characterized as one of his earliest friends; and the most sensitive *politi-cometer* could not have indicated one hostile atom of influence. With Mr Perry's early history we have no concern, farther than to remark, that his own prosperous career gives a satisfactory confutation of many of the histrionic declamations which he poured forth against the order of things in this peculiar country. A man of liberal sentiments, and who has ample means for hospitality, always can command good company in London; and Mr Perry had the requisites and the result. He was admitted into the first society,—he was an enthusiastic, although not a very skilful critic in the fine arts, particularly in music, which occupied many an amusing corner in his journal. He was what is called a collector, and had acquired a very pretty library. These pursuits, and the company with which he associated, gave a gentlemanly tone to his newspaper, unless when, from ill health or occasional absence, too much was left to his hack subordinates.

But, in lamenting the death of an amiable man and a celebrated journalist, we have also to lament the death of the *Morning Chronicle*. The *Morning Chronicle* will, no doubt, still be continued, but no longer under his controul, and the controul of his responsibility and character. Scarcely, indeed, has he ceased to breathe, when the entrammelled subordinate, now the acting master, gives a taste of future progress. In the very article on the death of this able journalist, the journeyman scribe poisons the cup dedicated to his Memory with the following observation, which we will not so far dishonour the memory of Mr Perry, who was what is called a constitutional Whig, as to believe that *he* would have permitted to appear in *his* *Morning Chronicle*. Alluding to the period of the French Revolution, this *New Chronicle* observes,—“ It was then that broke forth that unfortunate schism in the Whig party, which has had so fatal an effect on the character of the House of Commons, and which, by destroying its efficiency as a controul over the servants of the Crown, has thrown down the main bulwark of our old constitution, and left, it is to be feared, to the people, no other hope but in themselves.”—If this does not give a proper savour of unblushing radicalism, we are no judge of symptoms. But this only increases our regret for the loss of Mr Perry, who raised and sustained the character of his paper; for now, under

the influence of his long exertions, any low scribbler, for a while, may obtain currency for the vilest sentiments, and most reprehensible revolutionary doctrines.

(Addressed on the back thus)

“ Mr ALEXANDER, Sentinel Office, Glasgow.”

Mr Stuart having found it necessary to examine the writings referred to in the indictment, as well as some others in the handwriting of Sir Alexander Boswell, the following petition was presented to the Court :

Unto the Right Honourable the Lord Justice General, the Lord Justice Clerk, and Lords Commissioners of Justiciary, the PETITION of JAMES STUART, Esq. younger of Duncarn, Clerk to the Signet, Humbly sheweth,

That the petitioner stands indicted to stand trial at the instance of his Majesty's Advocate, on Monday the 10th of June, for the alleged crime of having murdered the late Sir Alexander Boswell.

That there are certain writings which are necessary for the petitioner's defence, but which, at present, are in the hands of third parties.

That the petitioner has no reason to think that these persons have any objections to deliver up these writings; but he understands that they rather wish for judicial authority to do so.

That these writings are as follows, viz.

1. A process which subsisted some time ago before the Magistrates of Glasgow, between William Alexander and William Murray Borthwick, printers and proprietors of a newspaper called the Sentinel. In this process, Borthwick was the pursuer, and Alexander the defender; and its object was, to maintain, or to reinstate the former in the possession of the office and documents of the Sentinel, from which the latter wished to exclude him. The process, and more particularly, the interlocutors which it contains, are necessary, because the fact of the petitioner's having got some of the documents of the Sentinel from Borthwick is specially mentioned in the libel, and it is insinuated, if not alleged, that the petitioner obtained them irregularly. This process is at present, or lately was, in the hands of Messrs Linning and Niven, writers to the signet, Edinburgh.

2. Articles which were inserted in the Sentinel, and which the petitioner wishes to prove, were written and sent

there by the late Sir Alexander Boswell, Bart. and in each of which the petitioner is named or alluded to. The first of these, a letter, bearing to be dated Auchinleck, November 7, 1821, and subscribed Alexander Boswell;—the second article is entitled “Whig Song;” the third is a letter signed “Ignotus;” the fourth is a letter signed “Mark Tod,” which appeared in the 17th Number of that newspaper; the fifth is an article beginning, “The late Lieutenant James Stuart,” and appeared in the 20th Number; the sixth is an article consisting of three or four pieces of verse, entitled “Valentines,” which also appeared in the 20th Number; and the seventh, a poem, entitled the “Bully’s Lament,” which appeared in the 25th Number.

These papers are at present, or were lately, in the hands of the Sheriff-depute of Edinburgh, having been taken possession of by him in a precognition relative to Borthwick’s affair.

3. A letter written by Sir Alexander Boswell to Robert Maconochie, Esq. lately from India. This letter was written on or about the 24th of March 1822. It makes mention of the petitioner’s name; and it relates directly to the unfortunate affair which has given rise to the ensuing trial. It is at present in the hands of James Balfour, Esq. of Whittinghame.

The petitioner is advised that the instant possession or inspection of all these documents is absolutely necessary for his defence.

May it therefore please your Lordships to grant warrant for letters of first and second diligence against the saids Messrs Linning and Niven, writers to the signet, Adam Duff, Esq. and James Balfour, Esq. and against all other havers of the said writings, for enforcing exhibition of the same, to be transmitted to the Clerk of Court, and to be made patent to the petitioner, and his counsel and agents, and that immediately; and to grant commission to the Sheriff-depute or substitute, or any of his Majesty’s Justices of Peace of the bounds, to take the depositions of the said havers, and to cause mark the said writings as relative hereto, and to transmit the same to the Clerk of Court as aforesaid,—or otherwise to do in the premises as to your Lordships may seem meet.

According to Justice, &c.

(Signed) H. COCKBURN.

To the preceding petition the following answers were given in on the part of the Lord Advocate :

ANSWERS for **SIR WILLIAM RAE** of St Catherine's, Baronet, his Majesty's Advocate, to the Petition of **JAMES STUART**, Esq. Younger of Dunearn, Clerk to the Signet.

This day (5th June 1822) the petition now to be answered was appointed to be answered by the respondent, or any of his deutes, and answers were ordained to be given in before ten o'clock to-morrow morning. By way of implementing that order, a copy of the petition was left at a quarter before five o'clock this evening, not with any of the respondent's acting deutes in the Court of Justiciary, but with a gentleman who is well known to have ceased acting in that capacity for some time past. The respondent knows not why this unusual course of proceeding was adopted, and he only mentions the circumstance as the cause why his answers have not been given in at an earlier hour ; at half after eight in the evening the petition was intimated to one of the Advocate-deputes.

The object of this petition is to obtain a diligence for the recovery of certain papers, the immediate inspection of which is said to be of importance to the petitioner in preparing for his approaching trial.

The writings sought by the petitioner are divided into three classes.

The first set of writings are said to be comprised in a process which some time ago depended before the Magistrates of Glasgow, between William Alexander and William Murray Borthwick, said to have been printers and proprietors of a newspaper called the "Sentinel." This process is said to be in the hands of Messrs Linning and Niven, writers to the signet.

The respondent has no interest to oppose the granting of the diligence for the recovery of this process ; but he cannot take upon him to say that Messrs Linning and Niven, who are the agents for Alexander, may not have good reasons for refusing the delivery of it to the petitioner.

The second class of papers specified in the petition are said to be ' Articles which were inserted in the Sentinel, ' and which the petitioner wishes to prove were written and ' sent there by the late Sir Alexander Boswell, Bart., and ' in each of which the petitioner is named or alluded to.' Then follows a specification of seven documents, the first of

which is said to be a letter bearing to be dated Auchinleck, November 7, 1821, and subscribed "Alexander Boswell." Now, the petitioner knows perfectly well that this letter was never inserted in the Sentinel, and that the petitioner is neither named nor alluded to in it. Further, this letter, together with the 2d and 3d writings specified in this part of the petition, are all libelled on in the indictment against the petitioner, as productions to be made against him at his trial, and were ready to be produced to the petitioner according to the usual practice, sending to the Crown Agent. They are now in the clerk's hands, where the petitioner may have access to them. It was, therefore, unnecessary for him to ask for a diligence to recover them. The 5th, 6th, and 7th items of this class of writings are said to be in the hands of the Sheriff-depute of Edinburgh, having been taken possession of by him in a precognition relative to Borthwick's affair. The respondent can hardly conceive it possible that No. 7 should have so come into the hands of the Sheriff, seeing that the petitioner himself states that it appeared in the twenty-fifth number of the Sentinel, which was not published until a considerable time AFTER the investigation and precognition, in the course of which it is said to have come into the hands of the sheriff-depute of Edinburgh. But, in regard to all of these writings said to have been inserted in the Sentinel, and to have come into the hands of the Sheriff in the course of a precognition relative to Borthwick's affair, the respondent cannot give any consent, direct or implied, to the recovery of them out of the hands of the Sheriff. The respondent understands that these documents belong in property to the printer of the Sentinel, Mr Alexander, from whose premises, the respondent is informed, they were irregularly carried away, and who has instituted a criminal prosecution against some of the parties concerned in carrying them away. The respondent knows not whether they are of the handwriting of Sir Alexander Boswell, yea or nay, but he has reason to believe that the most of them are not, and although he has no right or interest to resist the diligence sought he does not wish to be supposed to give even a tacit consent to a proceeding which, under pretence of wishing to prove that certain documents are of a certain handwriting, is to give a party access to documents which otherwise he has no right to see, and on which ulterior proceedings may be founded.

The *third* class specified by the petitioner, is "a letter from the late Sir Alexander Boswell to Robert Macono-

chie, Esq. lately from India." This letter is said to have been written on or about the 24th of March 1822, relative to the affair which led to the present trial, and to be at present in the hands of James Balfour, Esq. of Whittinghame. The respondent is ignorant of the contents of this letter; but if the petitioner thinks the inspection of it important to his defence, *the respondent* shall not object to his obtaining a diligence for that purpose, but at the same time he wishes it to be distinctly understood, that, in taking this course, he does not, directly or indirectly, admit the competency of the production of that letter in the course of the trial, or that the recovery of it from Mr Balfour will bring it competently into evidence, supposing it to be applicable.

In respect whereof, &c.

(Signed) DUNN. M'NEILL, A. D.

The Court pronounced the following interlocutor on the 5th June 1822: "The Lord Justice Clerk and Lords Commissioners of Justiciary, having considered this petition, with the answers thereto for his Majesty's Advocate; grants warrant for first and second diligence at the petitioner's instance, against the persons named and designed in the foregoing petition, and all others possessed of the writings called for in said petition, for recovery thereof, excepting the first, second, and third articles specified at the sixth page of the said petition, which, being libelled on in the indictment, are now lodged in the hands of the clerk of Court; and grants commission to Mr Andrew Murray, advocate, to take the depositions of the said havers at Edinburgh, and to be reported on or before Friday next; and ordains the said commissioner to transmit the said depositions and productions made therewith to the clerk of the High Court of Justiciary, sealed up, who is hereby authorized to open the same, and give inspection thereof to both parties."

The following is the examination which took place in consequence of the preceding interlocutor:

At Edinburgh, the 6th day of June 1822 years;

Compeared ÆNEAS MACBEAN, writer to the signet, who produced act and commission of the High Court of Justiciary, of date the 5th day of June in the same year, in the criminal prosecution at the instance of his Majesty's Advo-

cate against James Stuart, Esq. younger of Dunearn, granting commission to Andrew Murray, Esq. advocate, to take the depositions and receive the exhibits of havers, as therein specified; which the said commissioner accepted of, and appointed William Sutherland Fraser as clerk, to whom he administered the oath *de fidei*.

Compeared ROBERT WILLIAM NIVEN, writer to the signet, one of the partners of Messrs Linning and Niven, who being solemnly sworn, purged of malice and partial counsel, and examined as a haver; and being desired to produce a process which subsisted some time ago before the Magistrates of Glasgow between Alexander and Borthwick, referred to, being the first article in the act and commission, depones, and produces the said process, conform to inventory, with the exception of No. 6, "being copy dissolution of co-partnership," which being necessary to be produced in the hands of the clerk of the Court of Justiciary, in the criminal prosecution presently depending against William Murray Borthwick, he declines to produce now, but will lodge in the hands of the clerk of the Court of Justiciary in the course of this day. All which is truth, &c.

Compeared ADAM DUFF, Esq. Sheriff-depute of the county of Edinburgh, who being solemnly sworn and examined as a haver, and being requested to exhibit and produce a letter signed "Mark Tod," which appeared in the seventeenth number of the Sentinel newspaper; an article beginning "The late Lieutenant James Stuart," which appeared in the twentieth number of that newspaper; an article consisting of three or four pieces of verse, entitled "Valentines," which also appeared in the twentieth number; and a poem, entitled "The Bully's Lament," which appeared in the twenty-fifth number; or which several articles did at least appear in the said Sentinel newspaper, depones, That in the precognition that was taken before the deponent against William Murray Borthwick, different letters, writings, and other documents, were produced by Mr William Spalding, writer in Edinburgh, and delivered to the deponent: That on the 30th of March last, a petition in the name of the Lord Advocate was presented to the deponent, praying the deponent to deliver over, "or direct the clerk of Court to deliver over to the Crown agent," the said writings, letters, and documents; and in consequence the said writings, letters, and documents were, according to the

deponent's directions, delivered over to the Crown agent, and were contained in four parcels or packets, with the relative inventories, and the Crown agent's receipt granted accordingly. And the deponent now produces the said petition, with the receipt marked thereon, which is marked by the deponent, commissioner, and clerk, as relative hereto. And farther depones, That he does not know whether the papers mentioned in the interrogatory were or were not delivered up to him by Mr Spalding, and afterwards delivered to the Crown agent, but the said papers are not in the deponent's possession: That he does not know where those papers are. All which is truth, &c.

Compeared ADAM ROLLAND, Esq. Crown agent, who being solemnly sworn and examined as a haver, and being requested to exhibit and produce a letter, signed "Mark Tod," which appeared in the seventeenth number of the Sentinel newspaper; an article beginning "The late Lieutenant James Stuart," which appeared in the twentieth number of that newspaper; an article consisting of three or four pieces of verse, entitled "Valentines," which also appeared in the twentieth number; and a poem, entitled "The Bully's Lament," which appeared in the twenty-fifth number, or which several articles did at least appear in the said Sentinel newspaper; depones, That he has not these papers, and that he does not know where they are. Depones, That he cannot say but that they might have been in his possession; but that to his knowledge he never saw them. And being interrogated how he explains this? depones, That he had a great many papers in his possession with a view to the trial of Borthwick at Glasgow, but he does not know whether the writings called for were among them or not. Being shown the petition, with the Sheriff's interlocutor, and the deponent's receipts thereon, and interrogated and desired to produce the four inventories therein referred to, depones, That he has not the inventories; but depones, That the whole of the before mentioned papers, together with the inventories, as he believes, were delivered over by him to Mr Anderson, Clerk of Justiciary, and to Robert William Niven, agent for Alexander, at whose instance the precognition mentioned in the act and commission was led; the papers founded on in Borthwick's trial were delivered over to Mr Anderson, and the others to Mr Niven; and he adds, that it may be possible he may have returned some of the papers to Mr John Hope,

Deputy-Advocate, but as to this he does not recollect. All which is truth, &c.

Compeared again the before designed ROBERT WILLIAM NIVEN, who, being again solemnly sworn and examined as a haver, and being requested to exhibit and produce a letter signed "Mark Tod," which appeared in the 17th number of the Sentinel newspaper, an article beginning "The late Lieutenant James Stuart," which appeared in the 20th number of that newspaper—an article consisting of three or four pieces of verse, entitled "Valentines," which also appeared in the 20th number; and a poem, entitled "The Bully's Lament," which appeared in the 25th number, or which several articles did at least appear in the said Sentinel newspaper; depones, That he did receive a box of papers, relative to Borthwick's trial, from Mr Anderson, Clerk of Justiciary; and he believes one of the papers called for, viz. that beginning with the words, "The late Lieutenant James Stuart," is among them, because he sees it mentioned in the inventory appended to Borthwick's indictment: That he has not looked through the said box of papers, and he does not know whether the other papers called for are among them or not: That he also got the precognition in Borthwick's case from Mr Rolland, Crown agent, and some accompanying papers; but he is not aware that the papers called for are among these. Depones, and declines to produce the papers he got from Mr Anderson, having borrowed them on his receipt, and because they are libelled upon as productions in the indictment against Borthwick; but that he will return them to the Clerk of Justiciary before seven o'clock this evening. Depones, That he does not know where the papers called for may be, otherwise than as above deponed to, and that he has not fraudulently put any of them away. Mr Niven adds, that, on going home, he will immediately look through the papers he received from Mr Rolland, along with the precognition; and if he finds any of the papers called for, he will transmit them to the commissioner before five o'clock this afternoon. All which is truth, &c.

The commissioner afterwards received a card from R. W. Niven, stating, that he had looked through the papers alluded to, but had not found any of the writings called for.

At Edinburgh, the 7th day of June 1822 years.

PRESENT,

Duncan M'Neill, Esq. Advocate, and
Adam Rolland, Esq. Agent for the Crown; And,
Henry Cockburn, Esq. Advocate, and
Æneas Macbean, Esq. Agent for the before mentioned
James Stuart.

Compeared JAMES BALFOUR, Esq. of Whittinghame, who, being solemnly sworn and examined as a haver, and being requested to exhibit and produce a letter written by Sir Alexander Boswell to Robert Maconochie, Esq. lately from India, particularly specified in the act and commission, depones and exhibits the said letter, which, with its cover, is marked by the deponent, the commissioner, and clerk, as relative hereto. All which is truth, &c.

(Signed) J. BALFOUR.

JOHN HOPE, Esq. Advocate, having been present at the examination of Adam Rolland, Esq. which took place yesterday, and, having seen the act and commission, stated, that he would look through the papers in his possession, and, if he found any of the writings called for, he would transmit them to the commissioner. The commissioner afterwards received from him the letter signed "Mark Tod," under an envelope, on which it was stated to be the only paper required which was with him. And it is accordingly marked by the commissioner and clerk as relative hereto.

The following Defences were, on the 8th June, lodged for Mr Stuart:

DEFENCES for JAMES STUART, Esq. Younger of Dunearn, in the Criminal Indictment against him, at the instance of his Majesty's Advocate.

The pannel is a landed gentleman, and is infest as such. His proper designation is "James Stuart, Esq. Younger of Dunearn."

He is not guilty of the crime with which he is charged.

Acting as he is, under professional advice, he cannot admit that he was the cause of the unfortunate death of Sir Alexander Boswell; but if it shall be proved that he was,

then he is satisfied that it will appear to the Court, and to the Jury, that his concern in that affair was excusable and unavoidable. He had received repeated and unprovoked insults from that gentleman. These appeared in the form of very offensive and unjustifiable articles, written and published by him in the Sentinel newspaper, consisting chiefly of an article entitled "Whig Song;" another article, being a letter signed "Ignotus;" an article signed "Mark Tod;" and another article entitled "The late Lieutenant James Stuart." These publications charged the pannel with crimes and qualities which are intolerable to a gentleman; and they were aggravated, when taken in connection with certain similar articles which had appeared recently before in a newspaper called the Beacon, and which formed the groundwork of Sir Alexander's publications.

The pannel was guilty of no offence or irregularity in the mode in which he discovered that Sir Alexander Boswell was the author of these calumnies; but, on the contrary, obtained the evidence of his accession to them fairly from a person who he believed was entitled to give possession of the documents which proved it.

Sir Alexander himself was conscious that the affair in which he is said to have unfortunately fallen, had been rendered inevitable by his own conduct.

The charges of malice against that gentleman—of a determination to provoke him or any of the other lieges to fight with the pannel, and of absconding from justice, are all utterly denied.

The pannel has given in a list of witnesses, and a variety of documents, to prove his defence, by proving the circumstances on which he acted; and, however deeply he deploras the melancholy event which has occasioned this investigation, he is satisfied, that if he be tried by his peers, he cannot be found guilty of any crime.

(Signed) H. COCKBURN,

TRIAL.

Monday, June 10, 1822.

PRESENT,

The Right Hon. DAVID BOYLE, *Lord Justice Clerk.*

LORD HERMAND.

LORD GILLIES.

LORD SUCCOTH.

LORD PITMILLY.

(LORD MEADOWBANK did not attend.)

Counsel for the CROWN.

Sir WILLIAM RAE, *Bart. Lord Advocate.*

JAMES WEDDERBURN, *Esq. Solicitor-General.*

Mr DUNCAN M'NEILL,

Mr ROBERT DUNDAS,

} *Advocates Depute.*

ADAM ROLLAND, *W. S. Agent.*

Counsel for the PANNEL.

Mr FRANCIS JEFFREY.

Mr JOHN CUNINGHAME.

Mr JAMES MONCREIFF.

Mr THOMAS MAITLAND.

Mr JOHN A. MURRAY.

Mr WILLIAM GIBSON.

Mr HENRY COCKBURN.

ÆNEAS M'BEAN, *W. S. Agent.*

THE PANNEL took his place at the Bar, accompanied by his relatives the Earl of Moray, Mr Erskine of Cardross, and Captain Alexander Gordon of the Royal Navy, and by the Honourable Admiral Fleming.

The Prince Czartoriski, Lord Belhâven, the Honourable Henry Fox, and several other persons of distinction sat on the Bench with the Judges.

The instance being called,—

THE LORD JUSTICE CLERK, as the presiding Judge, thus addressed the Pannel:

JAMES STUART, pay attention to the Indictment against you at the instance of his Majesty's Advocate, now to be read.

The Indictment or Libel was then read over by the Clerk, Mr Stuart standing up.

LORD JUSTICE CLERK—JAMES STUART, what do you say to this Indictment?—Are you Guilty or Not Guilty?

Mr STUART—My Lord, I am Not Guilty.

Mr COCKBURN spoke as follows :

MY LORD,—WE do not intend to state any objection to the technical style of this indictment. It is drawn in rather a peculiar form, and contains statements and expressions which, we think, might have been spared, with some respect to private feeling, and no detriment to public justice. But still I am not aware that it is liable to any objections of a legal kind; and I must add, that, even though it were, these objections would require to be of no ordinary description, before the Gentleman at the Bar would allow us to state them, or to throw any obstacle in the way of a complete and full investigation of the truth, which has been his only and most earnest desire, ever since the unfortunate affair which made such inquiry necessary.

But though we have no objection to the technical relevancy of the libel, this is one of those occasions, on which it is the duty of the pannel * to avail himself of his undoubted privilege, of beginning the business of the day by such a statement of facts, as may enable the Court to judge of the bearing and relevancy of his defences. And we think it the more necessary to give this statement now, because this is a proceeding which involves considerations to the party far dearer to him than his life,—and your Lordships know that there are a variety of accidents which, before he may have an opportunity of bringing them forward again, may make the trial on the part of the Public Prosecutor break down. And therefore it is, that he thinks it right to avail himself of this opportunity of stating his defences, in the same way as the law gives an opportunity to the Public Prosecutor of stating his charges. And though the statement which I am going to make at present must necessarily be addressed to the Court, I hope that I am guilty of no impropriety, if I mention to the gentlemen summoned as jurymen, that it is partly intended for them; and that, as no one of them can tell but that he may be one of the persons who may be obliged to try the case, they will indulge me by attending to the explanation which I am about to give.

This indictment sets out by stating, that Mr Stuart had conceived *malice and ill-will* against the late Sir Alexander Boswell, and that, under the operation of this passion, he had formed the unlawful *design* of challenging that gentleman. So far all is consistent. Because having malice against this

* A name given in Scotland to the prisoner.

particular individual, it is at least possible that he should have formed the unlawful design of challenging that man. But, by a species of reasoning of which we cannot well comprehend the meaning on this side of the Bar, the indictment goes on further to state, that having special malice against that gentleman, *and no malice against any body else*, he not only formed the design of challenging Sir Alexander Boswell, but *others of the lieges*. And then, apparently for the purpose of showing that he was maliciously going about, in search of causes of a quarrel, the statement is, that he repaired "to Glasgow to obtain, through the medium of William Murray Borthwick, formerly one of the proprietors or printers of the newspaper called the Glasgow Sentinel, and then a prisoner in the jail of Glasgow, the manuscripts of sundry articles which had been published in the said newspaper, and other papers and documents connected with said newspaper, which were then in the premises in Nelson Street of Glasgow, occupied by Robert Alexander, editor and proprietor of the said newspaper, *and in the lawful possession and custody of the said Robert Alexander*; and the said William Murray Borthwick having been liberated from jail, *as arranged and concerted* by or with you, and having, on the 11th, or one or other of the days of the said month of March, carried, or caused to be carried, away from the said premises in Nelson Street of Glasgow, sundry writings, the property, or in the lawful possession of the said Robert Alexander; and having brought or caused to be brought, the said writings to the Tontine Inn or Hotel in Glasgow, where you then was, you did thereby obtain access to the said writings: And having found, or *pretended* to have found among them, some writings holograph of the said Sir Alexander Boswell, you did *wickedly and maliciously* challenge the said Sir Alexander Boswell to fight a duel with you: and a time and place of meeting having been concerted, you did, upon Tuesday, the 26th day of March 1822, or upon one or other of the days of that month, or of February immediately preceding, or of April immediately following, upon the farm of Balbarton, in the shire of Fife, a little to the northward of the road from the village of Auchtertool to the burgh of Kirkaldy, and about three quarters of a mile or thereby distant from the said village of Auchtertool, in the said shire, *wickedly and maliciously* discharge at the said Sir Alexander Boswell, a pistol loaded with ball, whereby the said Sir Alexander Boswell was mortally wounded, the ball having entered near the root of the neck on the right side, and shattered the collar-bone, of which mortal wound

the said Sir Alexander Boswell died in the course of the next day, and was thus murdered by you, the said James Stuart: And you, the said James Stuart, conscious of your guilt in the premises, *did abscond and flee from justice.*"

Now, all these collateral and extraneous statements, apart from the mere fact of the duel between the parties, are pointedly and most solemnly denied. I do not merely say they are statements which cannot be proved by legal evidence. They are statements for which there can be no moral evidence. If the light of Omniscience were let down on this affair, it would only show more distinctly, that the gentleman at the bar had *no* malice against Sir Alexander Boswell; that he did *not* seek the ground of a quarrel with him; that he was actuated by *no* conscious guilt; that he did *not* abscond, or flee from justice.

With respect to the other fact, by which the death of the unfortunate gentleman, now no more, was caused, if I were permitted to speak the sentiments of my client and friend at the bar, I would freely admit that that person met with his death at the hand of the prisoner. But I am not permitted to make here those candid and generous avowals which the prisoner would utter; and, therefore, acting as his counsel, though I do not anticipate that there can be the slightest doubt with respect to the fact on which this indictment mainly rests, we do not formally admit it. We call on the public prosecutor to prove it; and we do so chiefly in order that we may have the benefit of those explanatory circumstances of which otherwise we might be deprived. Accordingly, I beg that, in what I am going to state henceforth, what I say as to the catastrophe of this affair, may be always taken as an assumption, and not an admission. But, assuming the facts, this opens up the great question, Has the gentleman at the bar any legal apology for that effect of which he thus has been the cause?

I say that he has; and I shall proceed to state the circumstances on which we found the defence, that he is not guilty of the crime set forth in the libel.* But I cannot enter on this statement without most earnestly begging the protection of the Court, and the forgiveness of the Jury, when I say, that I feel myself constrained by two great disadvantages.

In the first place, it is one of the unfortunate circumstances of this affair, that it is connected with topics of a public and party nature, which are most unfitted for the

* This is the technical term in Scotland for the indictment.

calm deliberations of a court of justice, and which can scarcely even be alluded to without exciting great prejudices and irritation. But I declare, that I act at present under the most severe restrictions on myself, not even by reference, to go into those matters one iota beyond what is absolutely necessary for the bare understanding of the case. And if, in the course of this discussion, I should appear to trench upon subjects which cannot, however slightly, be alluded to without almost dethroning reason, I pray that this may be ascribed to the necessity of our situation, and not to our having the remotest desire to excite a prejudice of any kind whatever.

The other consideration is of a far more painful and more delicate nature. It is another grievous misfortune in this case, and one which the gentleman at the bar feels more poignantly than any stranger can, that justice cannot be done to the living without seeming to encroach on those charities which are due to the dead. I wish I could avoid this topic too, and that we could pass through the business of the day, without casting even a shade of doubt on the memory of one whose unfortunate loss has occasioned this discussion. I am afraid that we cannot. But I trust that your Lordships will go along with me, and keep it always in remembrance, that, if we shall be obliged to charge that person with impropriety, we are most willing to ascribe it to indiscretion alone. And, I scarcely know whether I ought to say I am sorry or that I am glad, that there is a circumstance to which, in consistency with this explanation, his conduct may be attributed. Sir Alexander Boswell was known to be gifted—a fatal gift, when not combined with consummate prudence and the happiest temper—with great ironical powers; and I am sure I ask no more than what his best friends will allow, when I beg that every thing on his part may be ascribed to that propensity which all men have, to exert those peculiar powers on which they have staked either their reputation or their pleasure. I am certain that, in our conduct of this case, there is at least one restriction which we shall impose upon ourselves, which is, that every word which we say shall be strictly true. And surely he is no friend to the memory of a person deceased, who thinks that the lustre of that memory can be increased by concealing the full disclosures of truth.

Under these two difficulties, let us see what are the real facts. The first I shall state is one, for which I have the authority of all present, that the prisoner is a man of unimpeachable character, and in the station of a gentleman. No

man, who knows where the delicacies of this case lie, can fail to perceive the relevancy, in strict law, of what I now say; and accordingly, in every question where an appeal has been made to the laws of honour, the circumstances of the parties making the appeal, with reference to profession, with reference to rank, with reference to temper, have been laid down by the greatest judges as most material ingredients in the case.

Now, though, in this indictment, he is styled, we think somewhat unceremoniously, '*James Stuart*,' those who drew it might have known that he was directly connected by blood with some of the noblest and most ancient families in the land. He is a first cousin, once removed, of the noble family of Reay. He is very nearly connected—the precise degree is immaterial—with the noble families of Buchan, Melville, and Cardross, and several others. But I need say no more on this part of the case than that he is lineally descended from that great statesman whose history adorns the name and the house of Moray.* Failing the family of the last Earl, the father of the gentleman at the bar would have inherited the honours of that illustrious house; and, accordingly, I perceive at this moment that he is supported, in this his day of tribulation, by the present possessor of the honours and fortune of that family, who has chosen to forego the privileges of the peerage, which would have given him a place beside your Lordships, and with great manliness and good taste, has rather preferred to sit at the bar with his relative and his friend.

Nor is the personal character of the prisoner unworthy of these high and hereditary honours. This is a theme on which it is far better for the witnesses to speak than for me. But I must say, that if it fell to the lot of any person to be reduced to the necessity of proving his personal character, there is no man beyond these walls,—aye, there is no man within them—who could get a more beautiful character, from a greater number of disinterested and spontaneous witnesses,—all tendering their services, from the ranks of his political adversaries, than will be given to the gentleman at the bar. I am not going to bring forward the public thanks which he has got again and again from the public bodies whose business he has done. But the special point of his character to which I would chiefly call your attention is, that

* This, we believe, was an allusion to the Regent Murray.

he is distinguished by a total absence from those propensities from which quarrels like this in general arise. If he has any quality more distinguishing than another, it is that of peacefulness; and your Lordships will hear it mentioned in evidence, that on every occasion on which his assistance has been required, he has been the certain and successful peace-maker; and that, if he is now charged with imbruing his hands in another's blood, he has more than once been the man who has prevented similar calamities under similar circumstances.

Now, it is perhaps not unknown to some of your Lordships—it is sufficiently notorious to every body else,—that, in the beginning of January 1821, a newspaper was established in this city called the *Beacon*. With the general merits of that publication, either with respect to other subjects or other men, we have nothing whatever to do. But on a particular occasion, almost exactly a year ago, that paper contained a gross personal attack on Mr Stuart. The terms of that attack, the propriety of it, the meaning of it, I don't care about here; I rest on the mere fact, that he was attacked, and that that affair was settled between him and a person of the name of Stevenson. How these two settled it, is perfectly immaterial. But it was settled. Some persons, I have heard, doubt the judgment or good taste with which the matter was set at rest by Mr Stuart. With this I have nothing to do: I have only to say, that he had the highest authority for what he did. But let it be right or let it be wrong, settled it was. The fact is, it was terminated and adjusted, and both parties were bound over to keep the peace. This happened in the month of July 1821.

Now, after that affair was over, sure am I that no *stranger* had a right to take up that quarrel—that no man, not a party to the business, particularly if living at a distance, had a right to adopt it, and treat the gentleman at the bar with ignominy. Sure indeed am I, that, with regard to Mr Stuart, boasting, as he did, of the friendship, and walking every day arm in arm with the most respectable men, and in the confidence of every eminent character, nothing had occurred to make him a common butt, at which every person in the street was entitled to level his insult.

Nevertheless, there appeared in that paper a series of other attacks, which, for his own sake, I wish the deceased had never seen, because I shall show how *he adopted them*. But there did appear a series of attacks, couched in language which

is a disgrace to our age, and the use of which, on this and other occasions, has created unheard-of dissensions among the inhabitants of a place, who formerly were singularly united in all the bonds of citizenship. I am almost ashamed to mention the language of these attacks,—language for which, I confess to your Lordships, that, till I was professionally obliged to degrade myself, by seeing the work in which it appeared, I did not think there were to be found readers, or even printers, in this land. But I find that Mr Stuart's name was directly coupled with the word *dastard*—with that of *bully*—*sulky poltroon*—*coward*—*despised*.

He reckoned these outrages a mere provocation to fight, *given on the part of the same persons with whom he had been bound over to keep the peace*. He therefore applied to the same Judge by whom this step had been taken, the Sheriff of Mid-Lothian; and without having recourse to measures of personal revenge at all, he asked for protection, as will be sworn to by that respectable Judge this day, by means of summary interdiction, or otherwise. But he was told that no redress in that form could be got—that, *because these provocations to fight appeared in a public newspaper*, as to which he was bound over not to retaliate, the Sheriff could do nothing—he would otherwise interfere with the liberty of the press!!! I am far from presuming to question the propriety of this learned person's judgment; but *what was its effect upon Mr Stuart?* He saw himself set up as a target, at which every base libeller might shoot, and when he applies to legal authority for protection, the answer is,—Protect yourself; I will give you none; at least none, which, from its being summary, is the only one of which the case admits.

Well, he submitted to this—to him most heavy judgment. For about a month or six weeks he submitted to slanders, which I would speak falsely if I said that he did not feel. He felt them to the quick, though no man but himself could have borne them with his patient courage.

However, that and other similar events brought the career of the *Beacon* to a close. And now another great branch of this history begins. That newspaper came to an end, and no continuation of it was set up in this place. A fair occasion was thus given for every human creature abstaining from touching Mr Stuart. Every man of good temper and good taste was thankful for this; and a common sentiment of satisfaction prevailed, in the belief that we had

once more returned to our ancient state of good neighbourhood and friendship.

But, in spite of this most tempting opportunity to have done with this affair, a newspaper, called the *Sentinel*, was set up in Glasgow,—in a different city, by different men, under different auspices—men with whom Mr Stuart had had no quarrel—no concern—no connexion. Yet, in the very first number of this paper, all the previous calumnies against Mr Stuart are purposely and deliberately adopted. In that very first number, I find it said of a gentleman, who has in his veins the purest and noblest blood in the country, and who at that moment was admitted to the society of as large a circle of friends as any man can boast of,—that he had *dishonoured the blood and the name of his family*. I find him accused by name of *meanness*, and called a *heartless ruffian*; and there is applied, not indirectly, but broadly, and without evasion, that intolerable word *Coward*, an imputation which, when it can be borne quietly, the character of a British gentleman is gone.

Mr Stuart, though he had failed in the first application which he had made to the laws of his country, was not discouraged from making another. He was advised, not for the sake of paltry gain, but for the purpose of showing that he was resolved to resist that torrent of abuse of which we have seen the first fountain, to raise an action of damages; and, accordingly, *before another number of the paper* was published, he had a summons concluding for damages executed against the known editors of the paper. He gave in a condescendence (being the technical term for a specification) of the facts complained of; and in the answers to that condescendence, he was, plainly and openly, in a court of justice, twitted, *because he had not fought*. * *The last article of this answer contains an appeal to men acquainted with the laws of honour*; and his civil rights were thus attempted to be prejudiced by a reference to those very laws, for observing which, he has the misfortune of now standing where he does!

He thus saw that even an appeal to the laws of his country was not to save him from renewed and aggravated insult. Because, even when humbly mendicating bare justice from a court of law, it was to be got only under those

* See Extract from the *Answers* for Robert Alexander, &c. in the *Appendix*.

odious allusions, which human nature must be changed before it can bear.

This summons had not the effect of checking the continuation of these sentiments in the *Sentinel*. They went on; and I am now obliged to come a little nearer to the deceased, by stating, that they went on apparently with a keener spirit, and under an abler hand. Several articles appeared, of which the Jury will hereafter hear more particularly. Some of them are mentioned in the indictment. Who the author was, we shall speak of immediately. But there appeared among others an article, entitled, "*Whig Song*;" a letter signed "*Ignotus*;" a paper beginning "*Lieutenant James Stuart*;" and one having the name of "*Mark Tod*." * There were several others besides, but what we have to do with at present are these four.

At the period I have come to, Mr Stuart did not know, *nor had he any suspicion*, who the author of these articles was. He and every body else was satisfied that they were not the productions of the printers, but that they came from some person who had not only that spirit which gives sarcasm its edge, but a few of those powers which give it its lustre. Accordingly, every one of his acquaintances saw how deeply they had sunk into his bosom, for *in every one of these articles the word Coward is directly applied to him*. These arrows struck the mark for which they were intended, and they cleft that heart they were directed against, though the quiver from which they came had not been discovered.

If any thing could have added to the greatness of this injury, and to its irreparableness, it would be certain other facts which about this time came to the knowledge of Mr Stuart, and satisfied him, that this newspaper, set up as it was in a provincial town, was not entirely left to the support of provincial men, but that it received the countenance of *certain persons of higher station*—a fact which I state for no other purpose but that of showing, that greater injury was thereby done to Mr Stuart,—because he was so placed, that there were few houses he could go into without the chance of having his eyes fixed upon a paper in which the word Coward was applied to him.

At last, after suffering under those attacks for a considerable time, that unfortunate day (as, in any view, I may call it), arrived, in which the author of these calumnies was to be detected. The papers were found in the office of the *Sen-*

* The two first of these articles are annexed to the indictment; the other two will be found in the *Appendix*.

tinel; and it is made part of the direct charge against Mr Stuart in this indictment, though, whether by insinuation or not, we cannot very well understand, that he got these papers *improperly*. Now, as I know that prepossessions exist on this subject, I am most anxious that the real state of the fact should be understood, and seen so plainly, that he who runs may read. For this purpose, it is not necessary to go into many details. The leading facts can be explained at once; and the statement which I am now to give, I know the evidence will confirm.

Mr Stuart, one day last March, was walking in the adjoining hall, when a person came up to him, and *got himself introduced as the private country agent of William Murray Borthwick*, the editor or printer of the Sentinel. This gentleman Mr Stuart had never seen in his life before; scarcely ever since; and the statement made was just this:—"Borthwick is alarmed for his pecuniary safety; you have an action of damages against him; the Provost of Hamilton has two actions of damages, and others of the same kind are threatened. He wishes to do that which is always the right and duty of a printer to do, to serve himself by giving up the author." The answer made to this proposal by Mr Stuart was the very same that was made by other two gentlemen to whom a similar intimation was conveyed. It was in substance this—"We are ready to go to Glasgow to save farther time; and if you give us the documents, we shall consider of your proposal. But we make no bargain; only we want the author,—we don't concern ourselves with the paltry printer."

Mr Stuart did not wish to go to Glasgow. The proposal indeed was, that one of the other two gentlemen should go. But they were prevented by accident, and he went himself, and he got the papers in question. But, in the *first* place, (for I have two facts to state in connexion with this part of the business), *he did not know* that Borthwick—assuming Borthwick to have had no right to give up the papers,—had no such right. In support of this, I have a witness against whom the prosecutor cannot object, I mean the Public Prosecutor himself. For what does he state in the indictment? That Mr Stuart went to Glasgow and got the documents;—*but it is not ventured to be said, that Mr Stuart knew that these documents were in the legal possession of Alexander.*

Therefore, on this point of the case, it appears that Mr

Stuart just did what any calumniated person would do, saying to the parties concerned, "I don't want your money, give me the author." He did what is usual in every case of stolen property, and which cannot be wrong in the stronger case of stolen character. Had he offered a reward of a thousand guineas for the author; nay, had he added, that if any person gave information, *no questions would be asked*, he would only have been doing what any man of spirit would have done. And what, I would ask, would have been said if he had *not* adopted this course of conduct; if he had hesitated about taking it? I know it well. I have the authority of all the past and after numbers of this paper, which leave no doubt what construction would have been put upon his conduct. "You *are* the coward, the bully, the mean man, the heartless ruffian, the white feather, the man afraid of lead, the man afraid to draw a trigger, the poltroon we called you; you talk of your character;—but you want a little money, it seems! because, when we put you in the way of getting honourable redress, you betake yourself to a civil action of damages, and let the author alone."

Mr Stuart, accordingly, took these papers; and it will be a strange circumstance if he should be thought wrong in doing so, when I am ready to poll the bar, from which I am confident, that there is not one man out of twenty who would not, both professionally and personally, say, that it was not merely his right, but his duty, to take them.

But I have a great deal more to say before leaving this point; for when I plead, that our defence on this matter is, that *he did not know* that Borthwick was not entitled to give up these papers, I am supposing that, in point of fact, Borthwick was not so entitled. But I now say, that, on legal grounds, *Borthwick was entitled to give them up*. The fact on this point can be very clearly and speedily told. Borthwick and Alexander were printers and proprietors of this paper; but at a particular time, and before Mr Stuart went for them, Alexander had proposed that Borthwick should go out of the concern. Borthwick agreed to this, but it was *conditionally*, and one of the conditions was, that a sum of money should be paid to him. On the faith of this future and prospective condition, which ought to have been fulfilled *within a limited time*, Borthwick very foolishly signed the dissolution of the firm, and put it in the hands of Alexander; but, of course, it was understood that it was not to be used *unless the conditions*

of the bargain were fulfilled. But Alexander, instead of waiting to fulfil the conditions, and pay his money, chose, most illegally and dishonestly, to publish the dissolution of the copartnership in the Gazette; and this in order to perform the trick of ousting his partner, and yet keeping his cash. On this, Borthwick made an application to the Magistrates of Glasgow, praying that he might be reinstated in the office, unless his money was paid;—and the Magistrates pronounced a judgment, that if the money were not paid within a certain time—eight days,—Borthwick should be entitled to resume possession of what was his own. The eight days were allowed to elapse, and the money was not paid. Borthwick did not instantly run to take possession on this. He waited a considerable time further—about a fortnight, till the interlocutor was eight days final, and a sufficient time had passed for advocating to this Court; and at last, seeing that no money was to be paid,—that there was to be no petition,—no advocacy,—he went and resumed possession of his premises. He was in possession for a whole day. His associate in the office was Alexander, and no attempt was made to dislodge him.

To be sure Alexander, seeing that his partner, who was less disposed than himself to be libellous, was thus reinstated, had recourse to a *manœuvre* to get him out of the office. On an *old* caption, and for a debt not due, he caused him to be hurried to prison, and there he lay for eight days. Now, it was while he was thus in prison that the communication mentioned was made to Mr Stuart, and Alexander having thus crippled his partner, and defeated the interlocutor of the Magistrates by his illegal violence, was not idle in the mean time. Borthwick had in the office his own repositories, desks, and drawers. All these it pleased Alexander to break open; on all of these he put new locks; for the very purpose of making him sure that when, by the operation of the law, Borthwick should be relieved from prison, he should not get access without having again recourse to the Magistrates.

It was in this situation, when the legal rights of this man had been defeated by a piece of illegal violence, that Mr Stuart found him when he came to Glasgow. But observe,—I beg your Lordships will observe,—Mr Stuart had no connection with Borthwick, directly or indirectly. He had no connection with the story which I have now been telling you. He had nothing to do but to deal with Borthwick as the apparent proprietor, and to take the papers. He did

not, as the indictment says, liberate Borthwick from jail. Borthwick was liberated by payment of the L.50 for which he had been imprisoned, but not one farthing came, directly or indirectly, from Mr Stuart. It was paid by Borthwick's private agent, as a part of his general business, and Mr Stuart had no more to do with it than the child unborn.

Therefore, the second remark which I have to make is, that, if the propriety of Mr Stuart's conduct depends on the fact of Borthwick's being entitled to do what he did, then his conduct was perfectly proper, for Borthwick was so entitled. He was the legal custodier and administrator of the company papers; and though he may not have been entitled to *give away* the company property, yet, as administrator, he was entitled to prevent the company and himself from being ruined by actions of damages. He was entitled to *exhibit* the papers for this purpose.

Mr Stuart thus got the papers innocently.—But from that day till this, he has felt the weight of the discoveries which he then made. For though I believe he would rather have given his life than have made the disclosure which he did, against a gentleman with whom he was somewhat related,—with whom he had never been but upon good terms,—whose talents he had always admired; nevertheless, the melancholy truth was discovered, that his half friend, *Sir Alexander Boswell, was the author of the worst calumnies against him.* He discovered enough to make himself satisfied; and I shall have no reliance on evidence henceforth, if the Jury be not satisfied that Sir Alexander was the author of that "*Whig Song*,"—of the letter signed "*Ignotus*," and of two or three other productions, in every one of which,—I do not say from malice,—I hope it was not from malice,—but from the sportiveness of an idle fancy, *he does apply the term Coward to the name of Mr Stuart*, without ever having received any provocation, or the smallest pretext for doing it.

For, observe, that these were statements made by Sir Alexander Boswell, against a gentleman who had formerly never written or spoken a word but in respect of him. I know it has been said, and I am sure there are persons here who must take the remark, that Sir Alexander's conduct had some extenuation from his having been the object of a previous publication in a different newspaper by Mr Stuart. I am most willing to let him have the benefit of that extenua-

tion, in so far as he can have it, for a sincere and honest *belief* on his part, that that was the case; but he was completely misinformed. If he ever got such information at all, *he was misinformed*. Mr Stuart is too much of a gentleman, and possesses too much mildness of character, to be guilty of anonymous publications against any individual. He never wrote one single word against, or about, Sir Alexander Boswell, nor had he, for two years before, written one syllable in the paper which I know has been referred to, except one slight discussion about the particular direction of a Ferry on the Frith of Forth.

So that Mr Stuart found himself here in very extraordinary circumstances indeed. He had now suffered such wrongs, as no gentleman in this country is ever affected to submit to, and he had seen all these insults adopted and aggravated in the Sentinel. Yet he found a letter from Sir Alexander Boswell, subscribing a sum of money to defend the Sentinel; in other words, to defend that very defamation for which the Sentinel was prosecuted; and then he found all the previous wrongs levelled at his head, on the authority of no base scribbler, but of a man, not quite his equal in family to be sure, but fully his equal in public station. What was—what could, Mr Stuart do after this? Was he to submit quietly? Was he not to speak? Was he to huddle up these papers, and go about the world with his diminished head marked with the word Coward? No—he did what, (with the exception of the Bench), there is not a man in the kingdom who would not have done. He called in the advice of able and honourable men: in particular, the advice of one relative and friend, a nobleman, whose interference has proved a mighty blessing. The Earl of Rosslyn, on seeing these documents, saw at once that there was but one course to be followed. He left a message for Sir Alexander Boswell, stating that he wished to see him. After the lapse of several days (for Sir Alexander was then in London) he came to Edinburgh, and an interview took place between them. At that interview Sir Alexander was attended by another gentleman, whose judgment and amiableness of disposition made him a worthy confidant on such an occasion. Mr Douglas and the Earl of Rosslyn met with Sir Alexander Boswell,—and *I pray the Jury to observe what the terms were that were then offered to Sir Alexander*. Why, if Mr Stuart had been the bully and ruffian he was called, like a beast he would have rushed to the combat, and insisted that his wrongs should be positively and instantly wiped out with the blood of both, or one of them. There are men, and these amiable

and honourable men too, who have been unquestionably hurried into this course. But Mr Stuart, putting down, as he is thus proved most effectually to have done, the calumnies which had been launched against his temper and heart, was perfectly temperate and moderate. He who had suffered wrongs which made life intolerable, was yet willing to retain his life, and leave his antagonist the possession of his and of uninjured honour, by making two propositions, one of which it is my astonishment that Sir Alexander did not accept.

They had evidence of his accession to these calumnies, as being the author of them, and yet when they were exhibited, he was told, in the *first* place, that *if he would deny* that they were his, his simple assertion would be taken as conclusive against all evidence whatever: he had but to say, *They are not mine*, and Mr Stuart and he would have shaken hands together. But he did *not* say they were not his,—I wish he could have said so; but he was a gentleman, and he knew he could not say so truly. He distinctly *admitted the authorship* of that song, which was selected for the sake of simplicity, as the ground to be taken up. He admitted that song over and over again. He thus stood before a gentleman, who was his equal in every respect, confessing to him, “I have called you a coward.” Yet another proposal was made to him—“Let us take it, Sir Alexander,—let us take it *as a mere bad joke*. We are willing to take it in this light. Say but that you are sorry for it; that it was a squib; and that you had no serious intention of impeaching the honour or courage of Mr Stuart.” I am sure that was a proposition as mild as the greatest peace-maker could possibly have made, and it was a proposition to which the party *might have acceded without the slightest imputation on his honour*. For who can imagine that Sir Alexander would have been impaired in the estimation of society by acknowledging, on this occasion, that the whole *was an idle sarcasm*? Yet that satisfaction he refused. He said, I cannot submit to be catechized. I will make neither denial nor apology.

Now, was a meeting possibly to be avoided after this? On this matter we have the testimony of the Earl of Rosslyn, a person not accused of violence of disposition of any kind. We have more. We have the authority of Mr Douglas, who was chosen as his friend and peace-maker by Sir Alexander Boswell himself. These gentlemen will tell you, that they held a meeting to be absolutely inevitable. No legal, no moral, force could prevent that catastrophe. But there is a third witness as to the necessity of this, who renders it quite

unnecessary to speak of the conviction that arose in the minds of the mutual friends. *Sir Alexander himself* has left evidence behind him, which explains what *he* thought of this matter, and its character is unequivocal.

It seems that at the very time when he was writing these papers, his heart misgave him.—He knew that he was doing what was rash, and might give offence; and, accordingly, he left orders, as we shall prove, at the newspaper office, that they should immediately be destroyed. At the same time, having still those indestructible feelings of gentlemanlike accountability, which form the defence of Mr Stuart, he adopted the course that the Beacon had pretended to adopt before him, of leaving this additional direction at the office, that, if any one wished to come to him for what he had written, *demanding personal satisfaction*, his name should be given.

What inference are we to draw from this proceeding, except that, in concocting and publishing these lampoons, he was aware that he was levelling shafts which would strike some person who *must* call him to account?

It has been said that the calumny was not his. We shall endeavour, however, to prove that it was. Nay, that he even went the extraordinary length of concealing his penmanship, or of employing another person to write that libellous production—the offensive song. I trust this is not true. But if it be, what fact can be more conclusive, than that he, a gentleman, should have written or composed that which he felt had to be concealed under a disguised or stranger hand?

When Sir Alexander first heard of the discovery of these papers, or rather when he came to Edinburgh after their discovery,—I mean, on the 23d of March, when he received a message from Lord Rosslyn, telling him that he wished to see him upon Monday—I pray you to observe what he did,—*I mean before he knew what the object was of Lord Rosslyn's message*. Lord Rosslyn merely said, that he wished to see him, without mentioning either why, or for whom. Yet at this very moment, on Sunday the 24th of March, he wrote a letter to a gentleman of great respectability, a friend of his in London, Mr Robert Maconochie, stating, that he had received a message from the Earl of Rosslyn.* He stated, that he did not know what it was about, but he had no doubt it was *about these squibs*, and that whoever complained, he was determined to give a meeting.

* See *Appendix*.

And his conscience went a step farther ; for he added, that he would do this, *even though the inquirer should be Mr James Stuart*. That is, before he knew by any communication from Mr Stuart, that he was speaking of him, or thinking about him, he was aware that he had given Mr Stuart cause of offence, and accordingly prepared for that rencounter which he knew to be inevitable, by asking Mr Maconochie to be his second. On the evening of the same day, or soon thereafter, *but, at any rate, before he knew what the message was to be about*, he prepared himself with another friend, that most excellent gentleman who attended him to the field ; and to him he made the same statement, saying, he did not exactly know what article the message was to be about, but that he should not wonder if it were to be this, *and then recited the two offensive verses of the Whig Song*.

Not only so ; but, at the time of the interview which I have mentioned, and on going to the field, he very distinctly stated, what virtually absolved Mr Stuart from all blame, by saying, in plain terms, that he held the meeting to be the consequence of his own fault, *and to be altogether inevitable*.

Nay, there was a particular time in the history of this transaction, in which your Lordships will find that Mr Stuart and he were bound over to keep the peace ; and when the officers were conveying him to the Sheriff's office, he made use of expressions to them which I do not pretend to repeat. But the import of them was, that the officer might just as well allow him to escape, because no binding over could prevent a meeting ; and that, if they did not settle this matter by risking life, *he and Mr Stuart could not live together in this island*.

I have, therefore, the two seconds, and not only these, to which great weight must be attached, but I have the opinion *of the deceased himself*, to which I attach conclusive weight, in evidence of the inevitableness of this meeting.

The affair being thus resolved upon, I need not state at any length its details, or rather I need not mention them at all. This case is, and must be, utterly devoid of those aggravations, which sometimes are to be found in personal quarrels ; every thing was, and must have been, done fairly. We have acting for Mr Stuart, a nobleman, whose name, whose character, whose profession, and whose age, is itself a guarantee that nothing could be done, but with the most consummate prudence, gentleness, and propriety. We have for the other, Mr Douglas, who, though a novice—long may he continue so—in these affairs, has conducted himself

throughout, not only with the noblest fidelity to his friend, but with the most admirable candour and generosity towards his friend's antagonist. These gentlemen being present, is evidence conclusive to all the world, that, let what else be wrong, the duel was fairly fought.

I am sorry that I am obliged to add any thing about the views of the principal in approaching the fatal field. But I am bound to state, as I see it has been relied on in analogous cases, that Mr Stuart saw his antagonist making preparations, which he was bound to interpret as of the most deadly character. I am not insinuating that in this Sir Alexander was wrong. But the fact is, that he first proposed that the affair should be on the *Continent*, and in that singular and invaluable document in which he has expounded his views—the letter, which, as I mentioned before, he wrote to Mr Maconochie, he expressly says, that the reason why he wished to go to the Continent was, that he was about to do a deed, for which the operation of the British law might be inconvenient. “*If,*” says he, “*I should be the successful shot, I should not like the after proceedings of our Courts of Justice.*” The resolution of fighting, and the consequence of thus fighting *fatally*, was still adhered to, though the intended scene of action was changed, and after it was resolved to fight *in England*; because it is proved that he resolved to fight there, in order solely to avoid the subsequent operations of justice. And when at last he agreed to fight in his native land, he did so with no altered intention in this respect; but because he was advised *by a legal friend* that *he would be safer in the hands of the Lord Advocate, than in those of an English Grand Jury.*

Accordingly Mr Stuart took it so. He made his preparations *for death*. Every thing was done that a man certain of never seeing another sun could do. I am as certain as I am of my existence, that when he stepped from his carriage to the field, he firmly believed he was stepping to his grave.

An attempt, however, was made *even on the field* to settle this matter. Mr Douglas, with that good sense and good heart, which has really made it a pleasure to remark his conduct in this affair, asked *his own friend Sir Alexander*, immediately before the fatal preparations were made, if there was no possibility of yet settling it?—Sir Alexander knew how it might be settled. The two propositions of either denying the papers—though, to be sure, he could not well do this, after having admitted them,—or the simple and ho-

nourable apology of the whole being a bad joke, were still open to him. But he shook his head, and said it was impossible.

So the parties met, and I need state no more. They fired together, and Sir Alexander fell. The contrast which was then exhibited in the conduct of this sulky poltroon—this bully—this ruffian—forms one of the most striking and honourable pictures I have ever seen in moral nature. Mr Stuart, instead of rushing impatiently to a premature combat, accommodated his antagonist, with admirable coolness, with every delay, and every request that he made. He was willing to follow him to the Continent. He then agreed to meet in England. He agreed to give the delay of a fortnight. He agreed to meet in Scotland; and though it has been said there was hurry at last, that hurry, though it did not come from Sir Alexander Boswell, was occasioned by the natural and resistless conduct of a member of his family; who, hearing of his danger, gave that information, without blame to either party, certainly without blame to Mr Stuart, which made it impossible that farther time could be granted.

Now he who had borne all his intolerable injuries with a degree of courage far more heroic than that of braving present danger in the field; he, who, during his own personal danger, had behaved as if he had not been the novice in such matters that he was, no sooner found himself unexpectedly the survivor, and saw his antagonist at his feet, than he was instantly dissolved in all the tenderness of an infant. He was hurried away from the field. I believe, of himself, he was incapable of moving from the spot. He came to Edinburgh; but, even amidst the agitation of that moment, he did not forget what was due to his name. He left a message in the proper place, which we really think might have saved the public prosecutor from saying, that after this fatal day *he fled and absconded from justice*. Rather than have submitted to this sarcasm, for it is more like that than any thing else, Mr Stuart would have rushed instantly to jail, could he have foreseen the possibility that such a charge awaited him. He went instantly to a friend, Mr James Gibson, and amidst all his agitation, purely directed towards the unfortunate gentleman who had been wounded, he directed him *to leave word at the Crown-office, that whenever he was wanted, the public prosecutor might command his presence*. This was not a *fleeing from justice*. It was only a fleeing from those inconveniences to which

suspected innocence is necessarily subjected; and, accordingly, from that day to this, he has been not only anxious for his trial, but he has been using every exertion to bring it on, to *invite, to goad, to provoke*, the public prosecutor to proceed.

He went to London, and from thence to France; and we have the two gentlemen here this day, Mr Thomas Allan and Mr John Clerk, with whom he was when he first received the intelligence that Sir Alexander was no more. These gentlemen will explain to you if he received it in the spirit of a man who was merely glad that he was himself safe, or with the temper of one who had any feeling of malice towards the deceased. They will tell you, that they never witnessed so natural and so generous a flood of sorrow, for the ties which he knew that he had broken, and for the life which he knew that he never could recall.

Out of these facts, the great question which your Lordships will this day have to ask is, if the catastrophe of this painful affair is to be alleviated by a conviction of murder against Mr Stuart? On the law of the case I have nothing to say, because it will come hereafter at a more proper time, and from an abler hand. But I may state in general, that I know that our law is rigid in its provisions for the preservation of life. I know also, that it is liberal in its presumptions of innocence, and in its sympathy with the infirmities of our nature; and that all its other maxims are levelled and absorbed in this great one, that no man *can* be guilty, whose mind is innocent. Is the mind of the pannel innocent of crime on this occasion? I have one fact more to state in illustration of that, and it is one which really forms a conclusive and impressive termination to all the apologies I have stated for Mr Stuart. Sir Alexander Boswell, in reference to this affair, consulted no less a person than a Supreme Criminal Judge,—a Judge of this Court,—that Judge, who, to his honour, is not here to-day; and, in the letter which he writes to the brother of that Judge, he says, that, “*on consulting him, his Lordship tells me, I may depend on you.*” That is, a Supreme Criminal Judge prepared Sir Alexander Boswell for the meeting, by furnishing him with a second. If any one imagines that I state this to the disparagement of that Judge, he is mistaken—I say it to his honour. It only proves that such was the inevitableness of the combat, that even a person best acquainted with the laws, and one professionally reared to reverence them, could not so far

pluck his human nature from his breast, as to say that it was wrong.

I know that, in the application of the law, it is sometimes thought due to the deceased, and to the interest of society, that offences of this kind should be visited with some punishment. But it is a sufficient check against the repetition of them, that the sufferer, before he engages in them, and ever afterwards, must be deeply punished in the quarrel, and in the event; and I, therefore, conclude by submitting, that, instead of adding to the sufferings of him who has already borne so much, and who, let this case terminate as it may, is doomed to suffer so much more, the only legal, the only moral, the only appropriate conclusion of this day's trial must be a persuasion, that he acted under the operation of a great moral necessity, and that a verdict of *Not Guilty* is the result, which will give most satisfaction both to the law and to all reasonable men.

MR SOLICITOR-GENERAL.—The legal relevancy of the libel in this case is not disputed, and I am disposed to think that it is neither useful nor necessary, in the present stage of this matter, to enter into any argument on the fitness or relevancy of the topics intended to be urged in defence. If, in the course of leading proof on the part of the pannel, it should occur to the Public Prosecutor, that there is any objection to any part of the evidence that has been referred or to the relevancy, it will be time enough then for us to state it.

In the present stage of the business I shall only say, that the pannel is entitled to the favourable benefit of the able and eloquent statement which has just fallen from his counsel.

LORD GILLIES.—No objections have been stated by the prisoner to the relevancy of the indictment; but it is our duty, when it appears to us to admit of any doubt, to direct the attention of the Court to it. And there is one part of the statement in this indictment of which I entertain considerable doubt, both as to its relevancy and its expediency. It is to me quite new and unprecedented; and I do not see how the Court can allow it to remain.

The charge states narratively, That the pannel at the bar formed the unlawful design of challenging the late Sir Alexander Boswell to fight a duel. So far the statement is cor-

rect. But then it adds,—and others of the lieges to fight a duel or duels. That appears to me to be altogether new, and I do not think it consistent with our duty to allow it to go to proof. I doubt the relevancy of such a charge as this,—that Mr Stewart had formed the unlawful design of challenging others of the lieges to fight duels,—and I thought it right to bring it under your Lordships' view.

LORD PITMILLY.—I agree with my brother in opinion, that this part of the charge is irrelevant.

LORD SUCCOTH.—I think so too. We have nothing to do with any other but Sir Alexander Boswell, and therefore I think those general words should not be in this indictment.

LORD HERMAND.—No objection has been stated by the pannel to the relevancy of the indictment; but it appears to me that it is incorrect, in as far as it charges the pannel with the intention of fighting a duel or duels, with others of the lieges than Sir Alexander Boswell. If we find the indictment relevant, it ought to be with a *salvo* in this particular. I would not have this indictment cast—my desire is that the trial should go on, and I believe that is the desire of more than myself. There is no averment here that Mr Stuart knew that Sir Alexander Boswell was the author of these libels.

LORD JUSTICE-CLERK.—It certainly is our duty to notice if any thing irrelevant is stated in this indictment, whether it has been noticed by the counsel for the prisoner or not. And, therefore, there can be no impropriety in Lord Gillies noticing what appeared to him to be irrelevant; and I confess, upon reading this indictment, it did appear to me that this part of it is not relevant. No doubt, it consists of mere narrative, but a great part of this indictment is made up of narrative; and if your Lordships were to sustain an objection on that ground, it would apply to the whole; but I must confess, as this charge is exhibited against the prisoner, charging him with the specific offence of the murder of Sir Alexander Boswell,—his having formed or not an intention of challenging others of the lieges to fight duels, is not pertinent to this issue; and, therefore, I agree with your Lordships, that these words should be struck out.

The following jurymen were then selected by the presiding Judge, and sworn to pass on the assize of the pannel.

Thomas Adinston of Carcant.

William Pagan of Linburn.

John Wauchope of Edmonstone.

Sir Alexander Charles Maitland Gibson of Cliftonhall,
Bart.

Sir John Hope of Craighall, Bart.

James Watson of Saughton.

James Haig of Lochrin.

John Thomson of Burnhouse.

John Anderson of Whiteburgh.

Sir James Dalryell of Binns, Bart.

James Dundas of Dundas.

David Brown, clothier in Edinburgh.

Robert Paterson, ironmonger there.

Thomas M'Ritchie, wine-merchant, Leith.

William Telfer, merchant, Leith.

EVIDENCE FOR THE CROWN.

The following witnesses were then adduced on the part of the prosecutor :

JAMES, EARL of ROSSLYN, a General in the army, commanding the 9th Regiment of Light Dragoons, *sworn by the Lord Justice-Clerk.*

LORD JUSTICE-CLERK.—My Lord, Persuaded that your Lordship must be acquainted with the privileges of the peerage, and considering that such a case as the present is new, and has never been brought under the deliberate judgment of the Court, and as the question arising upon it may depend upon another jurisdiction, the Court will leave it to your Lordship's discretion what course you will think it fit to pursue in this case.

LORD ROSSLYN.—It is fit, under those circumstances—particularly after the honour your Lordship has done me in thus addressing me—that I should state, that I am not aware that any thing in my situation as a peer should alter or affect my duty in giving testimony as a witness, when duly called on to do so in a court of justice; nor do I hold, as far as I understand, that any privilege belonging to that rank should prevent me from answering any questions which the Court

may think fit to put to any other witness standing in similar circumstances.

LORD JUSTICE-CLERK.—Your Lordship is called in this question only as a witness; and though ordinary witnesses are bound to answer the questions put to them, they are under the protection of the Court, and thus secured from being subject to be tried for any matter as to which they may have given evidence, yet, as your Lordship, in a case of this nature, is not subject to the jurisdiction of this Court, you will judge what course you should follow.

LORD ROSSLYN.—I understand I am under the protection of the Court the same as any other witness; so far am I under the protection of the Court that I cannot be called upon hereafter. I wish to explain, that I do not see any distinction that can be taken between a peer and any other person,—the protection of the law being granted to peers equally with other witnesses.

Mr SOLICITOR-GENERAL.—Are you acquainted with the pannel at the bar?

A. I am.

Q. Were you acquainted with the late Sir Alexander Boswell?

A. I was.

Q. In the course of the month of March last, were you charged with any message or communication by the pannel at the bar to Sir Alexander Boswell?

A. I was.

Q. Will you explain what was the nature of that message?

A. Upon the 25th of March last I saw Sir Alexander Boswell, in consequence of a note which I had written to him, requesting permission to see him; and I stated, that I waited on him at the desire of Mr Stuart. I stated to him that Mr Stuart had been in possession of certain papers, some of which appeared to be in Sir Alexander Boswell's hand-writing, and having been sent by the post, bore the post-mark of Mauchline, and the corresponding post-mark of reception at Glasgow: That those papers were addressed to the Editor of the Sentinel, and appeared to be originals (some of them) of papers published in that newspaper: That one of them particularly, a song, contained matter most offensive and most injurious to Mr Stuart's character, charging him, in more passages than one, direct-

ly with cowardice: That among those papers there was a letter purporting to be signed by Sir Alexander Boswell, to the Editor of the Sentinel, containing some praise of the paper, and ordering it to be sent to him: That the song, and other papers, letters, &c. reflecting on Mr Stuart, appeared to be in the same hand-writing with that letter which bore Sir Alexander's signature: That the similarity of the hand-writing, together with the circumstance of the post-mark of Mauchline, formed so strong a presumption that these papers had been sent by Sir Alexander, that Mr Stuart thought himself entitled to ask Sir Alexander whether he was or was not the author of them, or had sent them to the newspaper. I stated, at the same time, that if Sir Alexander could say that he was not the author of these papers, or had not sent them to the newspaper, such a denial on his part would be conclusive against any evidence.

SOLICITOR-GENERAL.—Q. Who were present at the time you gave the message you stated to Sir Alexander Boswell?

A. No person at first.

Q. What passed then?

A. Sir Alexander stated that it was a subject of great delicacy, and he desired to have a friend present, to which I acceded, as highly desirable. Sir Alexander left me, and returned with Mr Douglas as his friend. I then repeated to Sir Alexander, in Mr Douglas's presence, what I had before said to Sir Alexander, taking all possible care to impress on Mr Douglas's mind, that my question to Sir Alexander proceeded and was justified by, what I conceived to be, taking all the circumstances together, strong presumptive evidence that the papers complained of had come from Sir Alexander; and repeated that Sir Alexander's denial should be held conclusive against any presumption.

Sir Alexander and Mr Douglas desired to confer together. I left them, and, when called back, found Mr Douglas alone. He stated to me that he could not advise Sir Alexander Boswell to give any answer to the question,—that Mr Stuart was in possession of the facts and the evidence upon which he relied, and he must thereupon exercise his own judgment. He stated, that if this unfortunate business was to proceed any farther, there were two conditions which Sir Alexander considered as indispensable,—one, that no meeting should take place for fourteen days at least, because he had some family settlements to arrange which he believed would require his presence at kirk and market,—

the other, that any meeting which might take place should be on the Continent. On these conditions I had no difficulty in saying, that I thought them likely to be agreed to by Mr Stuart.

Mr Douglas then called in Sir Alexander, who stated, that he acknowledged the letter with his signature to be his writing, and with respect to the other papers, he declined to give any answer whatever. We then parted.

I stated that I had copies of the papers in my hands, and the letter, particularly of the song, and of the letter signed "Ignotus," and I believe I tendered them; but they certainly were not perused or looked at. Neither Mr Douglas nor Sir Alexander thought it necessary to require a sight of the papers. We parted, and I agreed to call upon Mr Douglas at his own house shortly after I saw Mr Stuart.

MR SOLICITOR-GENERAL.—At this conference, at which were present Sir Alexander Boswell, Mr Douglas, and your Lordship, I understand your Lordship had only copies, and did not exhibit the originals?

A. I did not.

Q. And I understand farther, they were not asked for: What were the precise papers your Lordship was charged chiefly to insist upon?

A. There was a song, and a paper signed "*Ignotus*." It was inclosed in a cover, besides the letter I first mentioned.

Q. These were the three papers upon which your Lordship was authorized to ask an explanation from Sir Alexander?

A. They were.

Q. Was your Lordship charged to dwell particularly on any of those papers more than another,—and have the goodness to explain it to the Jury?

A. Certainly I considered the song as the paper of far the most importance, and upon which I chiefly, if not entirely, rested in stating the question; and I did so, because in two passages it contained a direct imputation of cowardice. However offensive any parts of the other papers might have been, their importance to Mr Stuart's character was greatly inferior, and, therefore, certainly not so much relied upon.

Q. Did your Lordship ever previously see the address of the paper signed Ignotus?

A. I did.

Q. Examine those papers.

A. That is the letter signed Ignotus. The second sheet contains other matters. That is the song.

Q. Did Mr Douglas say he would not advise Sir Alexander to answer as to the other papers?

A. He admitted the letter to be genuine, and said he would not say any thing as to the others.

Q. Did you then make any communication to Mr Stuart?

A. No farther than what I have stated.

Q. Will your Lordship now proceed to state what followed?

A. I saw Mr Stuart, and proceeded immediately to Mr Douglas, and stated, that I was grieved to find that no alternative was left to Mr Stuart—That Mr Stuart agreed to both the conditions stated by Mr Douglas, viz. That there should be a delay of fourteen days,—and that the meeting should be on the Continent;—and it was settled between Mr Douglas and me, that, as soon as it should be convenient for Sir Alexander to be in London, after settling his business, I should then hear either from him or his friend.—I stated that I would advise Mr Stuart, who had urgent business in London, to proceed there without the least delay;—and that I would be there myself on or before the 6th of April. It was agreed that all subsequent arrangements, with respect to the time and place of meeting on the Continent, should be settled when we were assembled in London.—I did collect that Mr Douglas would not be able to go with Sir Alexander to England.—I asked Mr Douglas, before I parted with him, whether there would be no possibility of avoiding, by any means, the painful necessity of carrying this matter to extremities.—I asked, whether it were possible that Sir Alexander should treat the song as a very bad joke on his part, and one of which he was ashamed; declaring, at the same time, that he had no serious intention of reflecting on Mr Stuart's courage or character. The manner in which that proposition, so thrown out, was received, led me to understand that Mr Douglas had no hopes that Sir Alexander would say any such thing.

I left Mr Douglas to go to Newhaven, meaning to return to Fife immediately, in the conviction that every thing relating to this subject was for the present finally arranged. The boat had sailed; and, before I embarked, I was over-

taken by Mr Douglas, who stated to me that Sir Alexander had taken the advice of a legal friend, and that he thought it no longer necessary to go to the Continent, and that Sir Alexander was therefore desirous of having a meeting in Scotland. I objected to that as highly inconvenient, and embarrassing in some respects, and as contrary to the agreement entered into between us. I stated, that many circumstances made it appear to me very desirable that all future arrangements should be settled in London, as we had agreed, whether we should go to the Continent or not; but that I was still of opinion, that we ought to adhere to the arrangement of going to the Continent. I stated also, that, upon my advice, I was not even certain whether Mr Stuart might not be set out for London before any communication could be had with him, and that I certainly believed he would go that night.

Mr Douglas mentioned, he thought it better that the meeting should take place in Scotland. I objected to this, that still the same objection remained. It was a matter of some discretion, and required some discussion; and Mr Douglas returned to Edinburgh, saying, as we parted, that he hoped there would be no hanging about the case, and that the meeting might take place here. I stated that I would not go back to Edinburgh, because I was persuaded that my return with him, coupled with our meeting in the morning, might excite observation and suspicion. I then went home.

All this took place the same day. I came over about nine, and returned with the late boat between four and five.

MR SOLICITOR-GENERAL.—Q. Were you again called upon next morning?

A. Yes.

Q. By whom?

A. By Mr James Brougham.

Q. In consequence of that visit from Mr James Brougham, what was done? What was the object of the visit?

A. (After a pause.) Of course, the Court cannot desire me to state what Mr James Brougham confidentially communicated to me. I am not at liberty to state what passed with Mr Brougham. It certainly cannot be evidence what he said to me. I will not repeat it without the direction of the Court. That was my reason for hesitating a little upon the question.

LORD SUCCOTH.—Your Lordship may mention what Mr

Brougham or any one else said, so far as is necessary to make us understand your testimony as to the facts under investigation.

Mr SOLICITOR-GENERAL.—Q. What time in the morning did you receive this visit from Mr Brougham?

A. I cannot speak to a few minutes, but I should think it was from about a quarter to about half-past eight o'clock.

Q. Was it at Dysart?

A. At Dysart. From eight to half-past eight certainly it was. It was early in the morning. Mr Brougham stated to me that Sir Alexander Boswell and Mr Stuart had been bound over in the course of the night by the Sheriff of Edinburgh, to keep the peace within the county and city; and that, in consequence of that proceeding, and the expedition which the matter now required, it had been settled during the night that Sir Alexander and Mr Stuart should meet at Auchtertool that morning, and he desired me to meet Mr Stuart at Auchtertool, which I did. I went there; and on the east side of the town I met Mr Douglas. We had some conversation, and we fixed upon a piece of ground in a field by the road side. Mr Stuart and Sir Alexander arrived in carriages, and got out at the place we had fixed upon.

LORD JUSTICE-CLERK.—Q. At what time was this?

LORD ROSSLYN.—A. I believe at ten o'clock.

Mr SOLICITOR-GENERAL.—Q. State in what parish Auchtertool is?

A. Auchtertool is a parish by itself, with a small town.

Q. And this field you fixed upon, is it in the parish of Auchtertool?

A. To tell the truth, I do not know. It is a little to the eastward of Auchtertool. I cannot state whether it is in the parish of Auchtertool, or in the adjoining parish.

Q. Am I to understand it is a little to the northward of the road?

A. The village is to the northward of the road, and the place is just alongside the road, to the eastward of Auchtertool.

Q. What next took place? Your Lordship will please go on with your statement.

A. The pistols were produced, and were loaded by Mr Douglas and myself, Mr Douglas sitting down, and I standing up. Mr Douglas received from me a measure of powder for each, and the balls, and rammed them down. There were but two pistols, of which Mr Douglas took one, and I took the

other. The ground was measured, (I cannot state exactly the time, whether before or after loading), twelve very long paces between the stations. There was some trifling difference in the measurement, and we took the longest. The pistols were delivered to the parties respectively by Mr Douglas and by me; and it was agreed that they should fire together, by a word. Mr Douglas put it upon me to give that word; which I did accordingly. They both fired, and Sir Alexander fell.

Mr SOLICITOR-GENERAL.—Q. Will your Lordship go on to state what took place then on the field?

A. Every possible assistance was afforded to Sir Alexander, who was surrounded by the medical attendants, Mr Douglas and myself, and I believe by Mr Brougham, who, during these transactions, had remained on a hill at a little distance, in charge of my horse. Mr Stuart had advanced with great anxiety towards Sir Alexander, but, from his situation, and the necessary treatment from those about him, he did not speak to him, nor do I think could have had any proper opportunity of doing so. When, upon examination of the wound, I was given to understand that it was a very serious one, I advised Mr Stuart to go away, which he did. All the others remained to give what assistance our strength might enable us in removing Sir Alexander to Balmuto, where it was judged advisable to carry him. No time was lost that could have been saved.

Before any thing took place upon the ground, Mr Stuart asked me if it was not fit that he should make a bow to Sir Alexander, expressive of a wish to be reconciled? I answered that I thought it perfectly right. And he advanced apparently for that purpose. Sir Alexander was then turned from him, and walking away, and I believe Mr Stuart had not the opportunity of doing so; but immediately after, my attention was drawn away from Mr Stuart to other objects.

I do not know if I have omitted any thing as far as narrative can go. If your Lordships, or counsel on the other side, put any questions to me, I shall answer them.

Mr SOLICITOR-GENERAL.—Q. You attended Sir Alexander to Balmuto?

A. I did.

Q. By whom was he accompanied?

A. By Mr Wood, Mr Liston, Dr Johnstone of Kirkcaldy, and myself. I bore a considerable hand in carrying him to Balmuto.

Q. And your Lordship left him there?

A. I left him there. All of us bore a very considerable share in carrying him, from the want of people there. And I left him there.

Q. At or about the time the ground was measured, or taken, as has been explained, did any conversation pass between your Lordship and Mr Douglas as to any possible reconciliation?

A. I should say, nothing at all material—an expression of a wish, I believe, on the part of Mr Douglas first, and certainly on my own, that any mode could be found, by which it might be amicably settled. But it was a mere wish, certainly without any hope, on my part, that such arrangement could be made, and without any explicit proposal on either side. After what had passed between Mr Douglas and me, the day before, when I had thrown out what I did, and made the greatest possible advance without success or hope, I considered the case as desperate.

Cross-Examined by Mr JEFFREY.

Q. Before you went to Mr Douglas at all, or Sir Alexander, you had examined the papers upon which your message turned?

A. I had.

Q. Had you compared, yourself, the hand-writing of the signed letter, with the hand-writing of the other two papers?

A. I had, carefully.

Q. And your Lordship was then satisfied that they were of the same hand-writing, or so like as to raise a presumption or belief that they were of the same hand-writing?

A. I was satisfied that the letter signed *Ignotus*, and the direction of the song, were, as far as I could judge, of the same hand-writing with the signed letter.

Q. With respect to the hand-writing of the song?

A. With respect to the hand-writing of the song, at the first view, there appeared to be some difference. It was in a hand that seemed to me to be in some degree intentionally disguised. But, upon a strict examination of it, I was led to believe that it was written by the same person.

Q. Had your Lordship examined and at all compared the texture or marks of the paper upon which those documents were written?

A. Yes. The water-mark, the texture of the paper, and the size, were different. The signed letter was a quarto, the other folio. The water-mark appeared to be the same, "Val-

leyfield." All the three had the post-mark of Mauchline; and the corresponding mark of reception, "Glasgow." And the address appeared to me to be indisputably the same hand-writing.

Q. Then I understand it was your Lordship's opinion there was a sufficient case made out to justify the application to Sir Alexander Boswell?

A. Most undoubtedly.

Q. You gave that opinion to Mr Douglas before calling out Sir Alexander.

A. I did.—The presumption arising from combining all the circumstances left no doubt.

Q. Does your Lordship remain of the same opinion now?

A. I do.

Q. I think your Lordship mentioned you took copies of the letter, and paper signed "*Ignotus*," to the meeting?

A. I had them in my hand.

Q. And mentioned to Mr Douglas you had them?

A. I did. He did not desire to see them.

Q. You stated they contained passages most offensive and injurious to Mr Stuart?

A. I did.

Q. And neither Sir Alexander nor Mr Douglas required exhibition of those papers?

A. Neither.

LORD JUSTICE-CLERK.—Q. The song contained a direct imputation of cowardice in two parts?

A. The song did.

Mr JEFFREY.—Q. And both gentlemen declined to answer any question?

A. Sir Alexander declined to answer, except as to the signed letter,—and Mr Douglas said he could not advise Sir Alexander otherwise.

Q. May I ask your Lordship whether there was any thing in the *manner* of putting the question either to Sir Alexander individually in the first instance, or to both together afterwards, which, in your opinion as a man of the world, was such as to prevent Sir Alexander from answering, if, in the negative or not, he was the author of these writings?

A. I can safely say that there was nothing in my *manner* of putting the question, as far as I can judge, that could have given the least offence, or caused any difficulty in answering the question in the negative, if Sir Alexander had thought fit to do so; and I venture to say this the more confidently, that

I am quite certain I took the greatest possible pains in my power to guard against any such unfavourable impression or interpretation;—and I repeated the observation, that we should consider Sir Alexander's word as completely decisive and conclusive of any question, and against any presumption that had been raised by our examination of the papers.

Q. Is your Lordship, as a man of honour and of the world, aware of any punctilio, or point of honour, that could have prevented a person, standing in Sir Alexander's situation, from answering the question in the negative, if he could have done so with truth?

A. I am not. And I would not, for one moment, have hesitated to do so for myself. I should not have had the least hesitation in so answering the question.

Q. If you had been the friend of any person to whom such a question had been put, and knew he was not the author, would you, in the circumstances, have advised him to declare he was not the author?

A. As the question was put, I would without the least hesitation.

Q. Then may I ask your Lordship, whether the declinature of Sir Alexander and his friend to answer the question, gave you the impression that their doing so was equivalent to an acknowledgment?

A. The declinature of Sir Alexander and his friend to answer the question gave me such an impression.

Q. I observe you mentioned, that, at the subsequent meeting with Mr Douglas, at his own house, you suggested, whether the matter might not be got over by Sir Alexander saying it had been a bad joke, and that he meant nothing offensive to Mr Stuart: Did Mr Douglas, on this, say, Sir Alexander was not the author of the song?

A. Not that I recollect.

Q. Then you supposed he was the author of the song?

A. Certainly.

Q. That of course was conveyed to Mr Douglas by the very question?

A. Certainly.

Q. If I understood you right, the first direct reference to a meeting between the parties came from Mr Douglas. I think you said, when an answer to the question was declined, Mr Douglas said, if the matter was to go on, Sir Alexander had two conditions to propose—one, that no meeting should take place for fourteen days; and another, that it should take

place on the Continent. Had you previously required such meeting, or was that the first time it was mentioned?

A. I had certainly not in direct terms required such meeting, but the necessary inevitable inference, from the question put, and the answer given to it, left the thing understood.

Q. But in point of fact Mr Douglas stated it first?

A. He stated it, because he stated, that, if a meeting was to take place, Sir Alexander had two conditions to propose.

Q. And that was the first and direct mention of a personal meeting?

A. That was the first mention of a personal meeting.

Q. I think you said Mr Stuart acquiesced in both conditions?

A. At once.

Q. I have two questions to ask your Lordship on the whole matter. From all that you saw of Mr Stuart's conduct in the matter, from the first commencement to the last, had your Lordship any reason to believe that he was actuated by hostility or vengeance to Sir Alexander Boswell, or merely by a desire to repair his injured honour?

A. From the whole of Mr Stuart's conduct throughout the proceeding, the impression made upon my mind was, that there was no feeling of personal ill-will or resentment against Sir Alexander Boswell, but a deep sense of the unavoidable necessity of vindicating his own honour, more especially when it was assailed by a direct imputation of cowardice.

Q. Did you find him unreasonable, or tractable, and disposed to comply with all your suggestions?

A. Perfectly reasonable, and most ready to comply with my advice.

Q. Another question I wish to ask your Lordship is, whether, on the whole of the transaction, from first to last, Mr Stuart's bearing and deportment were such as to make your Lordship persuaded that he was a man of constancy and courage, or cowardly and timid?

A. I have no difficulty in stating, that Mr Stuart's conduct from first to last, from the commencement to the 26th of March, was cool, composed, and temperate, and such as might be expected from a man of constancy and courage.

Q. Your Lordship applies that to his conduct on the field, as well as preceding?

A. To every thing from beginning to end.

Q. Was there any conversation or consultation about what he ought to do in the discharge of this painful task, I mean as to taking aim?

A. Yes.—Mr Stuart said to me at the moment I gave him the pistol, “I think I ought not to take aim,”—in which I agreed. I desired him to present his side, and not his front.

Q. Did your Lordship, accordingly, observe how he conducted himself? Had you your eye upon him, after giving the word?

A. Yes, certainly.

Q. Have the goodness to mention what the word was?

A. First, both parties were asked if they were ready. Then the word was given—as quick as the words could follow each other. “Present—Fire.”

Q. Will your Lordship take the trouble to repeat the two words in the *time* they were given, as nearly as you can?

(Here his Lordship repeated them in the time they had been given.)

Q. Before the word, “Present—Fire,” was given, the pistol was not raised by Mr Stuart?

A. No.

Q. It was at the word “Present” he raised the pistol?

A. It was—He raised his arm and fired, almost instantaneously.

MR JEFFREY.—There was no time, then, for an aim?

Q. You mentioned both parties fired: Did they both fire at once upon the word?

A. There was a small difference between the two. Sir Alexander’s pistol was the last, but it came very close upon the other.

Q. Can you mark the time between the two, so as to give the Jury a notion of it?

A. It was so close as scarcely to be distinguished.

Q. Was it as close as this? (Here Mr Jeffrey gave two quick raps on the table.)

A. Yes, I should think it was.

Q. Did your Lordship observe whether Sir Alexander fired towards Mr Stuart?

A. I cannot say. I observed nothing to the contrary. In fact, I made no particular remark.

Q. May I ask your Lordship whether you had, at this time, any intimation, knowledge, or belief, that Sir Alexander did not intend to fire at Mr Stuart?

A. Certainly not. I had no such intimation, knowledge, or belief. Such an intimation given to me must necessarily at once have precluded the possibility of a meeting, and

would have amounted to an intimation that it was Sir Alexander's desire not to fight. Such an intimation given to me would necessarily have precluded all proceedings, and would have amounted, in my judgment, to a declaration on the part of Sir Alexander, that he did not mean to fight. It would have been quite impossible that I could have been a party to any proceedings after such an intimation.

Mr JEFFREY.—I have a question or two to put as to Mr Stuart's character. It is not quite *cross*, my doing so, but it will save trouble to my Lord Rosslyn to have them put now.

Q. You have known Mr Stuart for some time?

A. A good many years. I have known Mr Stuart for many years.

Q. Pretty intimately?

A. Yes, particularly of late.

Q. Had you occasion to see him frequently, both in public and private society?

A. Very frequently.

Q. May I ask your Lordship your general impression as to his character, for honour and general respectability, and particularly as to his temper and disposition, as being quarrelsome, and vindictive, or otherwise?

A. I have no difficulty in saying, that, in all my intercourse with him, I have never found a man less quarrelsome or less vindictive than Mr Stuart, or more generally respected.

Q. He was much occupied in improvements?*

A. Very much in general business, and in improving his estate.

Q. Have you occasion to know he was not given to field sports, which require the use of fire-arms?

A. I never saw or heard of him as so engaged.

JOHN DOUGLAS, Esq. of Lockerby, *sworn by Lord Hermand.*

Examined by Mr M'NEILL.—Were you acquainted with the late Sir Alexander Boswell?

A. Yes.

Q. Do you recollect, in March last, of attending him to a meeting with Lord Rosslyn?

A. Yes, I do.

Q. Tell us what passed, in the order of time. Do you remember on what particular day it was?

A. It was on the 25th March. When I went into the room where Lord Rosslyn was, he held in his hand some

* See *Appendix*, Nos. 1, 2, 5, and 4.

papers. Lord Rosslyn then mentioned that he had called this meeting on a particular business: That a friend of his had got or seen the originals of the papers,—of which he held copies in his hand, which contained obnoxious language on his friend's character. He mentioned his name—Mr James Stuart. One of the papers, in particular, was a Song. These papers were unsigned; but, amongst the documents, they had also found a signed letter of Sir Alexander Boswell's; and, on making a comparison between the signed letter, and the unsigned documents, they had no doubt they were of the same hand-writing. They had also the Mauchline post-mark on the signed, as well as on the unsigned documents, and the presumption was so strong that they were Sir Alexander's hand-writing, that this meeting had been called, to get him to confess or deny if they were his hand-writing: That if, upon his honour, he would say that they were not his, no further question would be asked,—or if he confessed that they were his, and would say he was sorry for it, and that he had meant nothing serious against Mr Stuart's character and honour, and made a proper apology, he would require nothing more. Sir Alexander then answered, that any document signed by his name he admitted to be his, but he would say nothing as to any other. His signature he would not deny,—any thing unsigned, he begged not to be asked any questions about. I think that was all that passed at this meeting.

Q. Did all this pass continuously?

A. Yes.

Q. Did not Lord Rosslyn retire for some time?

A. Yes; he went into another room, and it was after he returned that Sir Alexander made that answer.

Q. Was that answer the result of your deliberation and advice?

A. It was.

Q. Then that interview was at an end?

A. That interview was then at an end. Lord Rosslyn then said he would see me where I might appoint. I fixed upon my own house.

Q. Did Lord Rosslyn come to your house?

A. He came to my house in about twenty minutes or half an hour thereafter.

Q. What passed between you and Lord Rosslyn?

A. His Lordship said, that he had seen Mr Stuart, and had stated to him what had passed; and as they were still both of opinion, that these documents were in Sir Alexander's

hand-writing, a challenge was inevitable; that he had received a message from Mr Stuart to Sir Alexander; that a meeting must take place; and this message I was to deliver to Sir Alexander.

Q. Did you communicate that message to Sir Alexander, and what was the time fixed for the meeting?

A. I did. Sir Alexander requested that it might not be sooner than a fortnight, as he had settlements to make which would take some time to prepare, and would require his going to kirk and market.

Q. Did Lord Rosslyn assent to this?

A. He did. He said, he thought it was a very proper thing, under such circumstances, to ask a fortnight.

Q. Did any thing else take place?

A. Yes. Sir Alexander mentioned that he wished the meeting to be on the continent; and to that Lord Rosslyn also assented.

Q. Were any farther arrangements made between you and Lord Rosslyn at that time?

A. Nothing farther. We had had communication before.

THE LORD JUSTICE-CLERK.—Was any thing said about going to London?

A. Lord Rosslyn might have said that he was going to London, or something of that kind; and that the parties might go there, and proceed from thence to the continent. I do not recollect. It did not make any impression on my mind.

Q. Lord Rosslyn then went away with the intention of going home?

A. I understood so.

MR M'NEILL.—Immediately, or shortly after Lord Rosslyn went away, did you see Sir Alexander Boswell?

A. Yes. Within five minutes Sir Alexander came into my house.

Q. Did you then communicate to him what had passed betwixt you and Lord Rosslyn?

A. I did. Sir Alexander said he was anxious to have seen me before I had seen Lord Rosslyn.

Q. Did he state the cause of that anxiety?

A. He did. He stated, that since we parted he had seen a legal friend, who had made him alter his opinion as to the duel taking place on the continent; and that he now wished it might take place in Scotland. I told him this was very unlucky, as we had settled it, and Lord Rosslyn had left Edinburgh; but that I would try to lay hold of Lord Ross-

lyn. I called on his Lordship immediately, but found he was gone. I immediately went after him to Newhaven, and there overtook him. I then communicated to Lord Rosslyn Sir Alexander's wishes as to the duel taking place in Scotland. Lord Rosslyn said he had seen his friend Mr Stuart, and had communicated to him that the meeting was fixed to take place on the continent, and he objected to any change in that arrangement; and he declined returning with me to Edinburgh, as it might excite suspicion. However, I stated, that if he allowed me I would call upon Mr Stuart, and I would let him know if a change could take place. Lord Rosslyn said I might call on Mr Stuart.

Q. Did you call upon him?

A. I did, and mentioned the change that had taken place in Sir Alexander's wishes, and likewise what Lord Rosslyn had said.

Q. What answer did Mr Stuart make?

A. Mr Stuart said he had no objections to the meeting taking place in Scotland; but he rather wished that this might be arranged with Lord Rosslyn than do it himself.

Q. Did any thing farther pass between you?

A. Nothing at that time.

Q. What was the next step you took in the matter?

A. I communicated what had passed to Sir Alexander, about 7 or 8 o'clock in the evening. He then said he had seen his man of business since the morning, and had altered his mind in regard to the time of the meeting, as any settlements he had to make might be done in two days instead of a fortnight.

Q. Did he propose any farther change in consequence?

A. He said he thought it was his duty to give every facility to the other party; and as the business he had to do might be done in two days, he authorized me to wait on Mr Stuart. I went to Mr Stuart's house again betwixt nine and ten in the evening, and found him at home. I told him I had come to mention this other change in Sir Alexander's wishes. Mr Stuart said, he thought it not right that he should have any communication with me on matters of that kind: That he had a friend in the house I might communicate with, and who would write to Lord Rosslyn, who was then on the other side of the water. Mr Stuart then introduced Mr James Brougham. I stated to Mr Brougham, that Sir Alexander wished the meeting to take place in two or three days,—say Thursday, when every thing would be ready for starting to some convenient place,—I mention-

ed Berwick-upon-Tweed, where they might choose either the English or Scots side of the border. I hoped he would write to Lord Rosslyn, and arrange accordingly, if Lord Rosslyn had no objections. Mr Brougham agreed to communicate with Lord Rosslyn, and let me know when he heard from him.

Q. What was the next step you took?

A. I had gone to a party at the Royal Hotel; about two o'clock in the morning the waiter came, and told me a person wanted to speak with me. I found Mr Brougham waiting down stairs.

Q. What communication did he make to you?

A. He told me he had been anxious to see me: that about 12 o'clock the parties had been bound over to keep the peace by the civil power; and he was of opinion that Mr Stuart and Sir Alexander Boswell, if he and I had no objections, should meet the following morning.

Q. What answer did you make?

A. I answered generally, that, under all the circumstances of the case, I thought so too, if Sir Alexander had no particular objections.

Q. Did you then go to Sir Alexander?

A. I then went to Sir Alexander's house; he had gone to bed. Under the circumstances I raised the family, and got Sir Alexander up. He stated he was also anxious to see me, and supposed I had come upon hearing that they had been bound over to keep the peace by the civil powers. I stated what had passed with Mr Brougham. He at once agreed with me in opinion, that he ought to meet the other party the following morning.

Q. Did you mention any particular place?

A. I went to Mr Brougham after that, and I told Mr Brougham, that Lord Rosslyn having been acting as Mr Stuart's friend, he should be present, and that, as we must leave the county, the best way would be to go to Fife, and that would be the easiest way to get at Lord Rosslyn,—and that it might be over as soon as possible. Mr Brougham agreed to send an express to Lord Rosslyn, telling him the change that had taken place; and Auchtertool was fixed upon as the nearest place where the parties should assemble.

Q. Were any farther arrangements made with Mr Brougham?

A. Nothing with regard to this,—none, except as to the pistols. I told Mr Brougham Sir Alexander intended to have sent to the country for his own next day, and that, as

we would be off before the shops were open, he would be unprovided. Mr Brougham said there was a pair belonging to Lord Rosslyn, to one of which Sir Alexander would be welcome if he wished.

Q. What time did you and Sir Alexander leave Edinburgh? Did you set out together?

A. After Sir Alexander made arrangements at home, we got a chaise; he sent for a medical man, and we set off a little before five.

Q. Was any medical person in the carriage with you and Sir Alexander?

A. Dr George Wood.

Q. You crossed the water?

A. We crossed at the Queensferry—breakfasted at North Queensferry—then went to Auchtertool. We were to be there at ten, and were there about ten minutes before ten.

Q. Did you see any other carriage arrive at Auchtertool?

A. We saw a carriage arrive about ten minutes after ten o'clock—Mr Stuart was in it.

Q. Did you find Lord Rosslyn at the village?

A. Not at the village. I went toward the road at the east end of the village, as I supposed Lord Rosslyn would come that way, and I met him about a quarter of a mile from the village.

Q. Did you then return?

A. I then told Lord Rosslyn we were ready at the village, that Sir Alexander was there, and that Mr Stuart had arrived—and that Lord Rosslyn had better not come into the village, as he might be known.

Q. Had you any conversation at that time with Lord Rosslyn?

A. I agreed to go back to inform Mr Stuart that Lord Rosslyn was there. Lord Rosslyn was to wait beyond the toll-bar, till the parties came up.

Q. You went back?

A. Yes, and then I returned with my party; we all came up to the spot where Lord Rosslyn was waiting—the other party then came up.

Q. They then got out of the carriages?

A. Our carriage was first—and they drove on a little farther.—I wished to speak to Lord Rosslyn, and went up to him. He pointed out a spot as convenient for the meeting, and begged me to go to the top of the hill to look at it. I did so, and I agreed it was a very convenient place, very retired. After examining the ground and approving of it, I

waved my hand, and Sir Alexander came out of the carriage, and came toward the place where we were. I then went up to Sir Alexander, and told him this was the place we had fixed upon.

Q. Did any thing pass between you and Lord Rosslyn as to the possibility of accommodating matters?

A. I expressed my wish merely to Lord Rosslyn that the matter could be accommodated. He said he was afraid it could not. Nothing more passed.

Q. What was the next thing done?

A. Lord Rosslyn and I proceeded to examine the most convenient place in this dell—a sort of hollow dell—we fixed upon a spot, where the distance was measured off.

Q. What became of the surgeons,—did they remain in sight?

A. Just at the entry to this place. I begged Dr Wood not to come forward. He requested to be present, and declined staying behind, saying, that he would wish to be near at hand. He came upon the ground, and I believe the other surgeon also came. After the ground was measured, twelve paces, the pistols were loaded with ball.

Q. What did the parties then do?

A. They took their positions.

Q. Lord Rosslyn and you retired?

A. On one side. We had arranged the signal. Lord Rosslyn gave the word of command. He wished me to do it, and I said he had better do it.

Q. Did Sir Alexander, before coming to the ground, state any thing to you, as to how he was to act?

A. Yes, he did.

Q. Where was that?

A. In the carriage, on the way from the North Ferry to the ground. He asked me, as a friend, what advice I would give him as to firing. I answered, he was the best judge of that, and that he should consult his own feelings. He said he had no ill-will at Mr Stuart,—he had no wish to put his life in jeopardy, though in an unhappy moment he had injured him,—he bore him no ill-will; and, therefore, it was his determination to fire in the air. I expressed my approbation of his resolution to do so.

Q. Having had this conversation with Sir Alexander, and seeing the parties ready, how did you direct your attention?

A. My eye was more upon Mr Stuart than upon Sir Alexander Boswell. I felt satisfied there was no great chance of Mr Stuart falling, Sir Alexander's determination having

been not to fire at Mr Stuart; therefore I kept my eye upon him.

Q. Did you observe Mr Stuart raise his pistol?

A. Yes, I did.

Q. Did he raise it steadily and deliberately?

A. He did it very steadily.

Q. Seeing the direction of the pistol, did you form any opinion as to his taking an aim?

A. I did not see the direction of the pistol. I saw it brought firmly up, and, of course, I then felt a little nervous.

Q. State what you observed?

A. They fired, and I then saw Sir Alexander fall.

Q. Did you hear his pistol go off?

A. Yes; I am pretty certain I did. They both went off, I heard the noise of two distinct shots.

LORD JUSTICE-CLERK.—Were they distinct from each other?

A. They were distinct from each other.

Mr M'NEILL.—Did you then go up to Sir Alexander?

A. I immediately ran up to Sir Alexander, and inquired if he was wounded.

Q. Did the surgeons come up?

A. They were quite at hand, and instantly with him.

Q. Did you observe Mr Stuart standing?

A. I do not think Mr Stuart left his place, at least not much from where he stood. I did not observe him much. I did not look much at him.

Q. Did you make any intimation to him?

A. After the medical persons had examined the wound, Dr Wood told me he was afraid it was mortal. I went towards Mr Stuart, and told him he had better go off directly.

Q. You have not mentioned the name of the medical gentleman who attended Mr Stuart?

A. I did not know it at the time, but afterwards.

Q. Did any person appear on the ground but the parties and seconds?

A. Yes; another person, whom I afterwards understood to be a medical person, Dr Johnstone, and Mr James Brougham.

Q. When Sir Alexander's wound was probed and examined, did he make any remark to you?

A. He turned round to me, and said he was very much

afraid he had not made his fire in the air appear so decided, as he could have wished.

Q. Was that the only observation of moment which he made?

A. That was the only observation.

Q. Was his wound dressed on the ground?

A. There was no dressing. He was then moved to Lord Balmuto's house. I borrowed Lord Rosslyn's horse to inform the family at Balmuto, to prepare for Sir Alexander's being brought.

Q. You assisted in carrying him?

A. On returning from Lord Balmuto's, I met them coming carrying him on a door. They had collected some people together, who assisted in carrying him there.

Q. You returned along with them?

A. Yes; along with Sir Alexander.

Q. Did you remain with him?

A. Yes; till the afternoon.

Q. Was the song that was talked of, the obnoxious article chiefly insisted on by Lord Rosslyn in the conferences with his Lordship?

A. Lord Rosslyn, holding the papers in his hands, said they were obnoxious, but the song in particular.

Q. Was the identity, or similarity of the handwriting, and of the post-marks, stated as the grounds of title for putting the question?

A. Certainly.

Q. Was the similarity of the handwriting chiefly insisted on?

A. He stated it, and also the post-mark.

LORD ADVOCATE.—Q. Was any thing stated at that time from which you inferred that the different papers were not of the same handwriting?

A. Nothing.

Q. Did you see the originals at any time?

A. Never.

Q. If you had understood or supposed there was any difference in the handwriting, would you have thought it your duty to have acted differently?

(Mr Jeffrey objected to the question.)

Q. If any thing had been stated that led you to suppose there was a difference in the handwriting, would you have thought it your duty, to demand a sight of the originals?

A. Certainly.

Q. If you had seen those originals, and it appeared to you

that that song was not in the handwriting of Sir Alexander, would you have thought it justifiable to have allowed any questions with regard to that song to be put to Sir Alexander?

(Mr Jeffrey having risen to state objections to the question, and the Court having in consequence intimated that the witness should retire, Mr Stuart rose.)

Mr STUART.—My Lord, the more complete this investigation is, the more agreeable it will be to me; and I have to request of my counsel not to object to any questions put by the Counsel of the Crown.

Mr JEFFREY.—It is not in every case I would be disposed to yield to any such request on the part of a client, but here I am disposed to allow the fullest possible investigation.

(The witness returned, and the question which had been objected to having been put,)

A. No, I do not think I would, if it was not of his handwriting. I think I would not have allowed him to answer the question.

Cross-examined by Mr CUNINGHAME.—I think you mentioned, that, in the carriage from the North Queensferry to Auchtertool, Sir Alexander Boswell said that he had injured Mr Stuart, and, on that account, that he would not fire at him—Do you know what he alluded to, in saying he had injured Mr Stuart?

A. He had written squibs against him.

Q. Did you understand one of those squibs to be the Whig Song on which Lord Rosslyn founded?

A. Perhaps it will be necessary for me to give a longer statement. When Sir Alexander first called upon me, it was on Sunday the 24th of March. He stated to me, he had arrived from London the night before about ten o'clock: That, upon his arrival, he had found a card from Lord Rosslyn. This card stated, that Lord Rosslyn had come to town very anxious to see him, and begged he would let him know when he arrived from London, as he had business of great consequence to mention to him. Sir Alexander then stated, that he anticipated from this, that he was going to receive a challenge, and he had no doubt it would be from Mr Stuart of Dunearn. He then mentioned, that he had, either since he came to Edinburgh, or before he came, learned there had been papers seized connected with the Glasgow Sentinel at Glasgow, and that he was afraid they might have got hold of some papers of his. And he then mentioned, that there was a song which he was afraid they might have

got hold of, and upon which he was also afraid a challenge might be founded. Sir Alexander repeated the song to me, and I recollect the part upon which he laid stress.

(A paper was handed to the witness, and he was asked whether that was the song?)

A. Yes; and his object in coming to me was, to solicit me to act as his friend upon the occasion.

Q. You mentioned, that, at a certain period of the conference with Lord Rosslyn in the Waterloo Tavern, one of the conditions made by Sir Alexander as to the meeting with Mr Stuart was, that it should be on the Continent. Did he assign any reasons for having it on the Continent?

A. Yes. He considered, if any thing should happen—if they should meet, and if he should hit Mr Stuart, he should suffer much inconvenience from the law of this country.

Q. You mentioned, that, after Lord Rosslyn went to New-haven, you overtook him, and proposed a change of place, to which his Lordship objected; at the same time, authorizing you, at your desire, to speak on the subject to Mr Stuart. Where did you then find Mr Stuart?

A. I called at his house, but found him from home; and as the servant said he would be at home soon, I walked about till I saw him in Charlotte Street.

Q. You mentioned Sir Alexander had seen a legal friend after your interview with Lord Rosslyn. Did you state to Mr Stuart any reason of Sir Alexander's for wishing to change the place of meeting from the Continent to Scotland?

A. Yes; I think I did;—that his legal friend told him it was quite unnecessary to go to the Continent, or even to England, as he was as safe here as anywhere, and rather more so; that the Lord Advocate was as safe as a Grand Jury; and, therefore, his legal friend had advised him not to go to the Continent.

Q. He said he had got this information from his legal friend?

A. My impression is, that this was the reason why he changed his wish as to the place of meeting.

Q. That, in the hands of a gentleman like the Lord Advocate, he would be more safe than in the hands of a Grand Jury?

A. Yes, as safe as in the hands of a Grand Jury.

Q. You mentioned that the parties were carried before the Sheriff late at night, and bound over to keep the peace with-

in the county. Do you know by whom that proceeding was suggested?

A. In answering this question, I am afraid I must go into some detail in my own vindication.

Mr JEFFREY.—There will be no occasion for mentioning names. We shall put the question in a general way.

Q. Was the proceeding of the Sheriff in consequence of information given him by the friends of the one party, or of the other?

A. By the friends of one of the parties.

Q. Of which party?

A. The friends of Sir Alexander.

Q. And you know this fact?

A. I have every reason to know the fact.

Mr JEFFREY.—We do not want to follow this further. We do not wish, in the slightest degree, to insinuate that the notice to the Sheriff proceeded from Sir Alexander himself. We believe it was without his knowledge, and against his will and intention.

Mr CUNINGHAME.—Do you recollect any thing said at your meeting with Mr Brougham, of the disagreeable nature of the information given to the Sheriff which had led to the parties being bound over to keep the peace?

A. Yes, I do. There was a great deal of conversation between Mr Brougham and myself on the subject, and we were anxious, as the affair must go on, that it should be proceeded in without delay. We agreed, that the sooner it went on the better, in case of farther interference. I stated myself, that there would be a great deal of talk on the subject, in society,—that one party would accuse Mr Stuart's friends of having done this, and another party would attach blame to the friends of Sir Alexander Boswell.

Q. In the journey from Edinburgh to Queensferry, did any thing pass between Sir Alexander and you as to the meeting being indispensable?

A. Yes, I think there did, in presence of Dr Wood and myself. We three in the carriage talked of the subject, and as Dr Wood did not know the circumstances, there was a sort of explanation given of them to him; and we all agreed that, under all the circumstances of the case, Sir Alexander was in duty bound to receive Mr Stuart's fire, if he came there.

Q. Was the amount of the conversation, that Mr Stuart could not act otherwise than he did?

A. I do not know. We rather talked of what Sir Alexander was bound to do, I think.

Q. Have you any reason to believe whether it was or not Sir Alexander's intention at any period to make an apology to Mr. Stuart?

A. After being with Lord Rosslyn, I spoke to Sir Alexander on the ground, and asked him if he would give way in any respect, and he told me, he did not see the least possibility of it.

Q. Did Sir Alexander explain to you, what he meant to do after firing in the air? Did he give you any notice of his farther intention?

A. No.

Q. Did he mean to make any apology then?

A. My opinion given to him was, that I had every hope the thing would stop there, as that would be the best apology he could make.

LORD HERMAND.—Q. Sir Alexander did not say he meant to apologize?

A. No, he did not. I have no doubt he had the same opinion I had.

Mr CUNINGHAME.—When it was arranged between Sir Alexander and you, that he was to fire in the air, was there any intimation of this given to Lord Rosslyn or to Mr Stuart?

A. None.

Q. Do you recollect the conversation between Dr Wood and you, near Auchtertool, on that subject?

A. Yes, I felt much responsibility in all the circumstances, and I asked Dr Wood as to giving a hint to the other party. I said I had no doubt this should not be done, and he agreed I was right. I also mentioned the subject to Sir Alexander himself, and he told me decidedly, not to give any hint whatever. He said it would be placing the other party in an awkward situation,—and we all three agreed that no notice should be given.

Q. After Sir Alexander took his station on the ground, did you give him any directions as to the mode of firing?

A. I went up to him to show him where he was to stand; and I said, Take care and make your fire in the air as distinct as possible; I hope there will be no difficulty then in bringing the matter to a conclusion, without any farther firing.

Q. Did you suggest the direction in which he should fire?

A. I said he should fire at the bank.

Q. Was that in the opposite direction from Mr Stuart?

A. Yes. It was in the direction where the seconds stood.

Q. Did you observe Mr Stuart receive the pistol from Lord Rosslyn?

A. I gave one to Lord Rosslyn, who, I suppose, gave it to Mr Stuart, and I gave the other to Sir Alexander.

Q. Did it strike you, from Mr Stuart's manner, whether he had been accustomed to use pistols?

A. I am not exactly a judge of that—as I said before, he presented his pistol steadily and with firmness.

Q. I beg to ask you in general, if Mr Stuart's conduct in the field on this occasion, appeared to you in every respect consistent with that of a man of honour and courage?

A. Certainly.

Q. Have you any reason to know, whether Sir Alexander ever wished his name concealed as the author of the articles in the Sentinel?

A. He stated to me, he did not wish it concealed.

Q. Did he add any thing on that occasion?

A. Yes, he seemed rather to feel that being an anonymous writer was not quite agreeable,—he did not seem to feel comfortable under it, and he said that, when he wrote in the Sentinel first, he sent a letter to the Editor, saying, that if any person came to ask who was the author of such and such articles that happened to have been written by him, if the inquirer said the object was a prosecution, the Editor was not to give up his name,—but if the person said it was to call the author to account for it, the Editor was then to inform his inquirer of Sir Alexander's name.

Q. Did Sir Alexander say, he had given any directions about manuscripts being burned, and that he was surprised they were preserved?

A. No; I do not think he did.

Q. I think you mentioned that Sir Alexander positively repeated two of the verses of the song on the Sunday morning. Did he afterwards, on the Monday after the interview with Lord Rosslyn, or at any time, expressly say to you that he was the author of that song?

A. I decidedly understood he was the author, from all of the conversation I had with him.

LORD JUSTICE-CLERK.—What was the direct instruction of Sir Alexander Boswell, communicated to my Lord Rosslyn as to those three writings?

A. My impression is, that I was authorized to state, that any thing signed by himself he would freely acknowledge; but, respecting any thing without his name, he begged not to be interrogated, and declined answering any question.

LORD GILLIES.—Q. Was it with your advice or approbation that Sir Alexander adopted this resolution?

A. It was almost solely by my advice. He himself was rather inclined to acknowledge the authorship.

(In answer to a question from Lord Hermand, witness added,) And I thought it was the most prudent advice which I could give him, as he had made up his mind to make no apology.

Dr GEORGE WOOD *sworn*.

Examined by Mr SOLICITOR-GENERAL.—You are a surgeon in Edinburgh?

A. I am.

Q. Were you called on, on the morning of 26th March, by Sir Alexander Boswell?

A. I was.

Q. What did Sir Alexander say to you?

A. That he was obliged to go out on an affair of honour.

Q. Did he request your professional attendance on that occasion?

A. Yes.

Q. Did you accompany him accordingly?

A. He left my house, and returned in a short time, accompanied with Mr Douglas in the same carriage.

Q. Whither did you, Sir Alexander, and Mr Douglas, proceed?

A. We proceeded to the Queensferry.

Q. And crossed it?

A. And crossed it.

Q. And then went where?

A. To Auchtertool, as I understand.

Q. Whom did you meet there?

A. No person whatever.

Q. Did you proceed to any distance from the village?

A. About three quarters of a mile, after remaining some time in the village?

Q. And then whom did you meet?

A. We passed one carriage on the road. It was before ours, and we passed it. I did not see who was in it.

Q. On the ground whom did you meet?

A. Lord Rosslyn and Mr Stuart. The carriage we were in stopped. Mr Douglas got out; and then Sir Alexander Boswell and I went on some hundred paces farther, and stopped at a gate. Sir Alexander and I got out. By this time Mr Douglas and Lord Rosslyn were a great way off down in a hollow, where I saw them. They seemed looking for a place for some particular purpose.

Q. Did you see Sir Alexander Boswell and Mr Stuart on that place?

A. I think not.

Q. Did you see them afterwards on the ground?

A. Yes, on the ground certainly.

Q. Then what did you do, when you saw them on the ground?

A. Lord Rosslyn addressed me, and said I had better remain where I was. I beckoned to Mr Liston to come to me, and Lord Rosslyn said I had better not go nearer. I said I was at too great a distance, and would much rather go nearer the scene.

Q. And you accordingly did so?

A. His Lordship said I should do in that as I thought proper, and accordingly I did so.

Q. Were you in such a situation as to see the parties?

A. Certainly.

Q. Did you see them accordingly?

A. I did.

Q. Did you see or hear the discharge of pistols?

A. I did.

Q. Were you called up to the ground immediately?

A. I stated to Mr Liston, upon reaching the ground, that we ought to turn our backs and not see the firing; but that instantly on the shots taking place we should get up as fast as possible. On turning round after hearing the firing, I saw Sir Alexander Boswell on the ground. We went up instantly, and found him wounded.

Q. Did you hear one or two shots?

A. Two shots, very close one on another.

Q. You immediately ran up?

A. We immediately ran up, and found that the ball had entered about the middle of the right clavicle, which it had severely fractured.

Q. State what occurred?

A. Two pieces of bone were extracted on the spot; the first by myself, and the second by Mr Liston. Each of us endeavoured to lay hold of and extract other pieces of bone, but we found it impossible to do so. We then proceeded to examine the wound, for the purpose of discovering if the ball could be extracted, or where it was lodged. But we did not find it.

Q. Was it your opinion that it was a mortal wound?

A. At once, I was perfectly decided.

Q. Was Sir Alexander carried afterwards to Balmuto?

A. He was carried afterwards to Balmuto.

Q. And did you attend him to Balmuto?

A. I did.

Q. And afterwards ?

A. Yes.

Q. And till he died ?

A. Till he died.

Q. When did he die ?

A. At half past three o'clock next day.

Q. And of that wound he died ?

A. Certainly. It was the cause of his death.

Q. Did any conversation occur in the carriage, in the course of your journey from Edinburgh to Auchtertool, or from Auchtertool to the ground, relating to the subject of the meeting, and what was it ?

A. Betwixt Edinburgh and Queensferry, to the best of my recollection, Sir Alexander, in the course of conversation, I think, mentioned, that, in all the circumstances of the case, Mr Stuart could do no less than call him out. I am satisfied that either he or Mr Douglas said so ; but I think it was Sir Alexander, and the other, whoever it was, coincided in the opinion.

Q. Go on.

A. I have no recollection of any thing farther on that subject. But, I think, Sir Alexander expressed, in the course of the journey, that he was determined to fire in the air. And, certainly, after leaving Auchtertool, and before arriving at the ground, and when Mr Douglas was getting out of the carriage, Sir Alexander said, Now, gentlemen, I beg you to remark, that it is my final determination to fire in the air.

Q. Is that all the observation Sir Alexander made on the subject ?

A. He made none farther that I remember.

LORD HERMAND.—Was there any other person present after the wound was received ?

A. Dr Johnstone—I forgot to mention him.

LORD JUSTICE-CLERK.—Was there nobody but you and Mr Douglas present at the conversation you have just mentioned ?

A. Nobody else.

Cross-examined by Mr MONCREIFF.—You mentioned you turned your back.—Was it before the pistols were presented ?

A. Yes ; certainly.

ALEXANDER BOSWELL, Esq. W. S. sworn.

Examined by Mr M'NEILL.—You were acquainted with the late Sir Alexander Boswell?

A. Yes.

Q. For several years?

A. Yes.

Q. Do you recollect, about the month of March last, his desiring some alterations on his settlements, or new settlements to be prepared by you?

A. I marked he did so on the 25th March.

Q. He required you to make those speedily?

A. He expressed a desire I would specify the shortest time in which they could be made out.

Q. Do you know whether those settlements were executed before his death?

A. They were not executed.

Q. Do you know that he had been in London for some considerable time before?

A. Yes—he had been about a month from Edinburgh.

Q. When did he return? What day?

A. On Saturday the 23d of March, late in the evening.

Q. When did you see him last?

A. About 12 o'clock in the evening of Monday the 25th of March.

Q. You never saw him afterwards?

A. I saw him afterwards. That was the last time I saw him in Edinburgh.

Q. Where did you see him last?

A. At Balmuto, on the Wednesday immediately following.

Q. He was then wounded?

A. He was.

Q. Were you there when he died?

A. About an hour before he died.

Q. Was it in Balmuto House he died?

A. Yes.

Q. You are acquainted with his hand-writing?

A. I have seen a good deal of his hand-writing.

(Here the signed letter, with Sir Alexander's name, was shown to the witness.)

Q. Is that his hand-writing?

A. That is his hand-writing.

LORD JUSTICE-CLERK.—Q. What is its date?

A. 7th February.

MR McNEILL.—We now show witness the song. Is that his hand-writing?

(It was handed to the witness.)

WITNESS.—It is not his hand-writing, to the best of my judgment.

MR McNEILL.—Look at the address—is this his hand-writing?

A. That appears to have a very little resemblance in the *f*'s, but I do not think it is his hand-writing. The first formation of the *f*'s resembles his hand-writing.

LORD SUCCOTH.—Do you think it is his hand-writing?

A. I should think it is not. I should say, it is not Sir Alexander's hand-writing.

MR McNEILL.—You say you don't think it is the hand-writing of Sir Alexander; do you mean that it is not written by him at all?

A. I think it is not.

Q. It is not his penmanship?

A. It is quite different from his usual hand-writing. I have had letters written in all the different varieties of hand-writing of Sir Alexander, and I do not think I ever saw any that resembles that.

Q. You mentioned you were with Sir Alexander at twelve o'clock on Monday night. Were you with him when he was apprehended by the Sheriff officers, and bound over to keep the peace?

A. I was.

Q. Did he say any thing which led you to think he knew, or did not know, how that took place?

A. He appeared very angry when he understood a Sheriff officer was in the house. He was agitated, and said he did not think any of the three acquainted with the circumstance would have used him so very ill as to have divulged it.

LORD JUSTICE-CLERK.—I understood Mr Jeffrey to say, he disclaimed all idea of insinuating that the information to the public prosecutor, which led to the parties being bound over to keep the peace, originated from Sir Alexander Boswell.

MR JEFFREY.—Most certainly.

Cross-examined by MR MONCREIFF.—MR Boswell, look at that paper. It is the paper signed "Ignotus." And look at the address upon the other sheet. Are they Sir Alexander's hand-writing?

A. Yes, both of these appear to be Sir Alexander's hand-writing.

Q. Look at the address of the song and of "Ignotus;" compare them together, and say if you think them different?

A. I think I distinguish that difference between the two, that I would call the one Sir Alexander's hand-writing, and the other not. The one is more upright than the other, in particular "Sentinel Office." This to the "Sentinel Office, Glasgow," is in Sir Alexander's hand-writing.

(This shown to the Jury.)

JAMES WALKER SWORN.

Examined by Mr M'NEILL.—You are tutor to Sir James Boswell?

A. Yes.

Q. You have been tutor in the late Sir Alexander's family for several years?

A. Yes.

Q. Are you well acquainted with Sir Alexander's hand-writing?

A. I have seen it frequently.

Q. Do you think that his? (Letter signed "Alexander Boswell.")

A. Yes, the letter is his.

Q. Look at this. (The Whig Song.)

A. It is extremely unlike any of his hand-writing I ever saw. I know his hand-writing.

Q. What is your opinion?

A. I think it is not his hand-writing.

Q. You taught some of the family to write, I believe; is it like the writing of any of the family?

A. No, it is not.

Q. Can you speak to the address also? Is it the same with the rest?

A. The address seems to be the same with the rest.

LORD JUSTICE-CLERK.—You say you have seen Sir Alexander's hand-writing; have you seen him write?

A. I have seen him at his writing-desk, but I do not think I have watched the pen. I think this is his hand-writing. (The paper signed "Ignotus.")

Cross-examined by Mr MURRAY.—Look at the address of that paper. Do you think that Sir Alexander's hand-writing?

A. Not so like it as the body of the paper.

Q. But do you think it is his hand-writing?

A. It has a good deal the character of his hand-writing.

Q. Look at that (Whig Song) and the Address.

(Here there was a considerable pause, during which the witness continued looking at the papers.)

Q. Do you swear that is not his hand-writing?

A. They are very much alike.

Q. Do you see any difference between them?

A. The word "Sentinel" in the one is not like the word "Sentinel" in the other.

Q. But look at the whole direction; and is there any word in the one different from some word in the other?

A. (A pause.) I do not observe any material difference.

Q. Now, Sir, open that song again, and look at it. Will you swear that is not Sir Alexander's hand-writing?

A. I have sworn.

Q. What difference do you see between that and his hand-writing in "Ignotus?"

A. The general character is unlike.

Q. Do you think it impossible that can be his hand-writing?

A. I cannot say.

Q. Sir Alexander wrote a very good hand in general,—a very clear distinct hand?

A. A very distinct hand.

Q. And made very clear strokes in general?

A. Yes; and the character of his hand was round.

WILLIAM HOME LIZARS, Engraver in Edinburgh, Sworn.

Examined by Mr M'NEILL.

(The letter signed Alexander Boswell and the Whig Song were handed to the witness.)

Q. You have seen these before?

A. Yes.

Q. Do they appear to be the hand-writing of the same person?

A. When I first saw them I thought this was by a different hand from the hand which wrote that. When I first saw them I thought the song was a different person's writing; but, when I again saw them, with other documents, on Saturday, I was very much inclined to alter the opinion I had previously given. Toward the end of the song, on the third page, the similarity of the hand to the writing in the other paper is particularly striking. At the beginning there ap-

pears to have been an attempt to disguise the hand, but in a great degree overlooked towards the end. That struck me on Saturday. There are some particular letters in which the similarity is very striking. For instance, the *B* at Boswell, in the letter, has a very strong resemblance to *B* at Bills, on the second page of the song. The letter *S* at Sentinel, in the letter, and the letter *S* in the word *Sae* (so) at the beginning of the third page of the song, also resemble one another.

WITNESS.—A general remark I would make is, that, in the first page of the song, all the long letters (*y*'s and *g*'s) are generally turned up with a loop. But this propensity in the song, after you pass the first page, is greatly done away with, and many of these letters are turned up differently from the way in the first page; or, in other words, with a dash. Now, in Sir Alexander's ordinary hand, he invariably ends the words, having those long letters, with a dash; and when, in the song, he discovered that he had insensibly got into his usual way of writing, he has carefully gone over these dashed letters with the pen, and converted them into looped letters.

There were also other grounds for my change of opinion—I had a greater number of writings, said to have been written by Sir Alexander Boswell, to compare the song with;—and, if these were shown me, I would point out whole words in the song resembling words in these other writings.

LORD ADVOCATE.—Q. Tell us where it was you saw these documents, and made these comparisons?

A. It was in the Justiciary Office, along with Mr Macbean.

Q. What were the documents with which you made the comparison?

A. There were these I have just mentioned, a Song, and a Letter to Mr Maconochie, subscribed by J. Balfour. In that letter there was the name Stuart, which bears a strong resemblance to the word Stuart in the song.

MR M'NEILL.—Q. And these were the only grounds for the alteration of your opinion?

A. Yes.

Q. On your first examination of them, you were of a different opinion, and thought the song in a different handwriting from the letter signed Alexander Boswell?

A. Yes.

Cross-examined by MR MONCREIFF.—Q. Did you see that paper signed *Ignotus*?

A. Yes, I think I did.

Q. Look if you find the word "Stuart," or any of the others there?

(Here a conversation took place, which prevented the question being answered.)

Q. Look at the long letter of two sheets?

(The letter, signed *Ignotus*, and the song were examined by the witness.)

Q. Is it the same hand-writing with the other?

A. I certainly think they are the very same. Those two are the same hand-writing, as far as I can judge. There is evidently a disguise of hand in the song.

LORD HERMAND — Q. You said there appeared to be a disguise at the commencement of the song, and not at the last part of it? What do you mean by disguise?

A. When a person writes in a disguised hand, and has to continue writing a long subject, he forgets himself, and ceases to disguise his hand. It is this absence of disguise which enables me to form an opinion.

WILLIAM SPALDING, Writer, Pitt Street, Edinburgh, sworn.

Examined by Mr M^cNEILL.

Q. You remember, last March, going with Mr James Stuart to Glasgow?

A. Yes.

Q. Who accompanied you?

A. Mr Stuart and Mr Henderson.

Q. Who is Mr Henderson?

A. A writer in Hamilton.

Q. When did you arrange to go?

A. Mr Henderson and I did on the afternoon of the 9th of March.

Q. And how did Mr Stuart accompany you?

A. We called at Mr Stuart's house, and then, for the first time, I learned he was to accompany us.

Q. What was your object in going to Glasgow?

A. To liberate Mr Borthwick from prison.

Q. When did you arrive in Glasgow?

A. At eleven o'clock at night.

Q. What day of the week, do you remember?

A. Saturday.

Q. What house did you go to, and stop at?

A. The Tontine.

Q. Did you take any steps that night to liberate Mr Borthwick?

A. I believe Mr Henderson went to the jail, but did not get admittance. But I did not go.

Q. Borthwick was not liberated that night?

A. He was not.

Q. When was he liberated?

A. On Sunday night.

Q. Was it for debt that he was incarcerated?

A. Yes, alleged debt.

Q. What share did you take in the liberation of him?

A. I had no farther share in the liberation, than seeing Mr Henderson pay the money

Q. You are private agent for Mr Borthwick?

A. Yes.

Q. Was it intended or arranged by Mr Borthwick, that he should go back to the Sentinel Office next day, after being liberated?

A. In consequence of a warrant from the Magistrates of Glasgow reinstating him in his property, he was desirous of taking possession next morning of the Sentinel Office, under that warrant.

Mr M'NEILL.—Q. You have not given a precise answer to what I asked. I want to know, whether, before liberating him, it was *arranged* that he should go back to the Sentinel Office?

A. I never saw him before, and I did not know he was to go back to the Sentinel Office.

Q. Did you know of the judgment in his favour at that time you talk of?

A. I knew of it before I went to Glasgow.

Q. But you did not know that, when he was to be liberated, he was to act upon that judgment?

A. I did not know till he was liberated.

Q. Do you know he went there?

A. He did proceed to the Sentinel Office next morning.

Q. I wish you to explain a little more. You say you are an agent for Mr Borthwick—that you went to Glasgow to liberate him, and yet you took no share in liberating him. If you went to Glasgow to liberate him, how did you go there without doing any thing to liberate him?

A. I never saw him till the money was paid to him.

Q. Is Mr Henderson agent for him?

A. He is agent at Hamilton.

Q. What was the object of your going to Glasgow?

A. I went along with Mr Henderson.

LORD ADVOCATE.—How did Mr Henderson and you meet?

A. I was employed two months before on business with him.

Q. Tell us how he came to Edinburgh at this time?

A. He came upon the 5th of March to get a suspension and liberation for Mr Borthwick. He did not get the information necessary for this till the Friday. On the morning of the Saturday I prepared a bill of suspension and liberation, with which I proceeded to Mr Miller, Clerk of the Bills. But having learned that the bill could not pass, without an intimation of answers, for 24 hours, it was then resolved between Mr Henderson and myself, in order to prevent litigation and delay, to consign the money directly in the hands of the jailor at Glasgow, in order to procure his immediate liberation.

Q. What time was this?

A. On the 9th.

Q. Was there any reason assigned for liberating that man, at that moment, or that hour?

A. The debt was not due.

Q. That is not an answer to my question. Was any reason assigned for liberating him in that hurried way?

A. None.

Q. You say so. How came Mr Stuart into this matter, Sir? Explain that.

A. Upon the Saturday forenoon, about two o'clock, Mr Stuart and Mr Aytoun called at my house, and urged me to get a bill of suspension presented as quickly as possible.

Q. What reason did they give for urging this bill of suspension?

A. To get Borthwick liberated.

Q. What reason did they assign? Did they assign any reason?

A. The wish of the gentlemen was, I should proceed to Glasgow to liberate Borthwick.

LORD JUSTICE-CLERK.—Q. Was any reason assigned for taking that step?

A. There was no reason given at that time.

LORD ADVOCATE.—Q. Did you understand there was any reason why Mr Stuart interfered in the matter?

A. I did not. I knew from Mr Henderson that Mr Borthwick was to take possession of the Sentinel Office upon his liberation.

Q. You say you knew no reason why Mr Stuart interfered in the matter, but that Mr Henderson——

Mr MURRAY.—What the witness knows may be asked.

What Mr Henderson or any other said to him is no evidence at all.

LORD ADVOCATE.—I am merely inquiring what Mr Stuart stated as his reason for his interference, or if he assigned any. Did Mr Stuart assign any reason for his interference, and what was it?

A. Mr Henderson stated to me, that Borthwick was prosecuted as a partner in the Sentinel Office, and wished to get free from the liability attending that connection. I introduced Mr Henderson to Mr Stuart. Mr Henderson, as Borthwick's agent, had expressed a wish to be introduced to Mr Stuart, to see if Mr Stuart would depart from an action of damages against Mr Borthwick, as the publisher of the Sentinel.

Q. What did you do on that occasion?

A. On the Thursday Mr Henderson and I were walking in the Parliament House. Mr Stuart passed; and I said to Mr Henderson, there is Mr Stuart; I will introduce him to you. I introduced Mr Henderson to Mr Stuart, and Mr Henderson told him that Mr Borthwick wished to be relieved from the action of damages at Mr Stuart's instance. Mr Stuart said, that would depend entirely upon Mr Borthwick himself,—that he was certain Mr Borthwick was not the person who wrote the libels against him in the Sentinel newspaper—and that, if Mr Borthwick knew and would tell him the names of any of the persons who wrote these articles, he would then consider whether he would desert the action against him or not.

Q. Was that all that passed then?

A. That was all that passed then.

Q. Then you say, that, upon Saturday, Mr Stuart and Mr Aytoun called, to urge you to get the bill of suspension and liberation ready? What did Mr Stuart say was his reason for wishing this?

A. He assigned no particular reason.

Q. Did Mr Aytoun, at that time, state any reason?

A. I cannot exactly recollect what passed.

Q. Was any thing said at that time of Mr Borthwick's taking possession of the Sentinel Office?

A. No. But it was quite understood Mr Henderson and I were to go to Glasgow to liberate Borthwick, by consigning the money, if bail would not be accepted.

Q. Did you contribute any part of that money?

A. None.

Q. What were you to do in Glasgow?

A. I went as Borthwick's agent.

Q. What were you to do there as Borthwick's agent?

A. Nothing particular.

Q. After going there, the proceedings you mentioned took place, and Borthwick was liberated, and you know he went and resumed possession of the Sentinel Office?

A. I know he left the Tontine to go to the Sentinel Office.

Q. Did he meet with Mr Stuart there?

A. Yes.

Q. In your presence?

A. Yes.

Q. Was that upon the Sunday night?

A. Upon the Sunday night.

Q. At what hour?

A. About eight o'clock.

Q. Was Mr Henderson present at that time?

A. He was.

Q. Was any other person present?

A. No other person. I am not very sure but Mr M'Gri-gor, writer in Glasgow, was present.

Q. Did any conversation take place then about Mr Borthwick going to the Sentinel Office in presence of Mr Stuart?

A. I think there was some conversation.

Q. Do you recollect the import of it?

A. It was at that time that Mr Henderson and myself informed Mr Borthwick he was entitled to take possession of the Sentinel Office at Glasgow.

Q. Was there any thing farther happened?

A. Mr Stuart left the room soon after that.

Q. Did any thing pass as to what Borthwick was to do on taking possession?

A. He was to take possession of the office and papers.

Q. You mean manuscripts?

A. Manuscripts.

Q. When was that arranged?

A. On the Sunday.

Q. When Mr Henderson, Borthwick, Mr Stuart, and you, were present?

A. I rather think Mr Stuart was present, but I cannot precisely say.

Q. Are you sure he was present?

A. I cannot positively say.

Q. Could you swear that he left the room before that took place?

A. I rather think he was present,—but I cannot be certain.

Q. What was Mr Borthwick to do with the manuscripts?

A. He was to bring them to me in Glasgow.

Q. Any particular part in Glasgow?

A. He was to put them into my hands in the Tontine.

Q. He was not to take all the manuscripts?

A. As many as would enable him to raise actions of relief against certain gentlemen of the county of Lanark who had established the paper.

Q. Did he take possession, or bring to you any manuscripts?

A. He brought the manuscripts to the Tontine where I was.

Q. When was that?

A. On the morning of Monday.

Q. Had he been in the Tontine that morning before?

A. He slept there.

Q. At what hour in the morning did he bring those manuscripts?

A. About eight o'clock. He did not bring them; they were sent by Loudon Robertson.

Q. Did he bring any of them himself?

A. He brought none himself.

Q. Did these persons bring the whole of the manuscripts?

A. The whole manuscripts of the Sentinel.

Q. And you suppose that they were the whole manuscripts of the Sentinel?

A. Yes.

Q. Did Robertson bring them into the room where you were?

A. He did.

Q. Into the parlour?

A. Yes.

Q. Did you, and Mr Stuart, and Mr Henderson, occupy all the same parlour?

A. Yes.

Q. Was Mr Stuart there at the time the manuscripts were brought?

A. He was.

Q. Before they were brought, had you any conversation with Mr Stuart that morning regarding them?

A. None.

Q. Had you any conversation with him on the subject of Borthwick at all?

A. None.

Q. When these manuscripts were brought to the room where Mr Stuart and you were, what was done with them?

A. They were opened up and examined by me, by Mr Stuart, and Mr Henderson.

Q. Any body else?

A. No.

Q. Did Borthwick come there soon after?

A. Yes.

Q. Did he assist you in examining the manuscripts?

A. He did not. That was done before he came in.

Q. Did you examine into the hand-writing of any of the manuscripts at that time?

A. Not before Mr Borthwick came. Mr Henderson knew the hand-writing of Mr Alexander. These were taken out and delivered to me, and he kept the rest.

Q. That was done in the parlour of the Tontine?

A. Yes.

Q. Did you examine the rest?

A. At that time I did not know the hand-writing of Sir Alexander Boswell.

Q. And it was not pointed out to you at that time?

A. No, it was not.

Mr M'NEILL.—Q. Did you then see any letter of Sir Alexander Boswell's?

A. I saw a letter of Sir Alexander Boswell's.

LORD JUSTICE-CLERK.—After seeing that letter, you compared it with other letters, did you?

A. I did.

Mr M'NEILL.—Q. What was done with those manuscripts?—Did you take them away from Glasgow to Edinburgh?

A. Yes.

Q. That day?

A. Yes.

LORD ADVOCATE.—Did Mr Stuart go with you?

A. He did.

Q. Do you know whether he had any other business at Glasgow?

A. I do not know.

Q. Look at those manuscripts; see whether those were in the number of the manuscripts which you took? (Here the song and the letter signed Ignotus were handed to the witness.)

A. Yes.

Q. Did you give the possession of those to Mr Stuart?

A. I did once.

Cross-Examined by Mr COCKBURN.

Q. You say you introduced Mr Stuart to Mr Henderson, in the Outer-House ?

A. I did.

Q. Was that introduction necessary, in consequence of Mr Stuart not being previously acquainted with Mr Henderson ?

A. Mr Stuart and Mr Henderson were not acquainted before that.

Q. Did you hear Mr Henderson, in the name of Borthwick, offer any papers or information to Mr Stuart, or any information about those libels ? Did Mr Henderson not say that Borthwick was anxious to give up the names of the authors, in order to get quit of the actions brought against him ?

A. I do not recollect.

Q. Do you recollect of Mr Stuart soliciting any such information from Henderson ?

A. I do not.

Q. Were you aware that Borthwick and Alexander had formerly been in trade together as printers of the Sentinel ?

A. Yes.

Q. You said you were aware there had been a judgment of the Magistrates entitling Mr Borthwick to resume possession ?

A. Yes, I was aware of that.

Q. Did you understand that Mr Borthwick—(I do not say the understanding was well founded)—had you any doubt Borthwick was entitled to resume possession ?

A. I had not the least doubt.

Q. You had no doubt. Are you aware that Mr Henderson had any doubt upon that subject ?

A. No, I am not aware that he had any doubt.

Q. That Mr Stuart had any doubt ?

A. I cannot tell.

Q. From what you heard Mr Henderson say, did you understand Mr Stuart was impressed with the conviction that Borthwick was entitled to resume possession ?

A. From what I heard Mr Henderson say, I think he had no doubt he was so entitled.

Q. Did Mr Henderson mention the action before the Magistrates of Glasgow ?

A. He mentioned the action at Borthwick's instance, and the decision in his favour.

Q. You say he mentioned the action at Borthwick's instance and the decision—did you hear him tell Mr Stuart that the decision in that action had become final ?

A. I am not sure that he did.

Q. You mentioned that Mr Borthwick was imprisoned

for a debt that you understood not to be due—Do you know that Mr Henderson said to Mr Stuart that that debt was not due?

A. I do.

Q. Had you any belief (I am not asking you if the belief was well founded) of the purpose for which he was imprisoned for a debt not due?

A. I had.

Q. Do you know why Mr Borthwick was imprisoned for a debt not due?

A. I did not know at the time, but I do now.

Q. And what was the reason?

A. To keep him out of the office.

Q. The L. 50 debt, you say, was paid by Mr Henderson?

A. By Mr Henderson.

Q. Do you know that the L. 50, or any part of it, came, directly or indirectly, from Mr Stuart?

A. No part of it came, directly or indirectly, from Mr Stuart.

Q. Where did it come from?

A. From Mr Henderson.

LORD ADVOCATE.—How do you happen to know that, Sir?—How do you know it did not come from Mr Stuart?

A. I was present the whole time, and did not see him give it.

MR M'NEILL.—Do you know where Mr Henderson got it?

A. I do not.

(LORD HERMAND here stopped Mr M'NEILL.)

MR COCKBURN.—On your journey to Glasgow with Mr Stuart and Mr Henderson, was any mention made of Sir Alexander Boswell's name?

A. It was not mentioned.

Q. You went to Glasgow upon a Saturday night,—was any mention made of Sir Alexander Boswell's name in Mr Stuart's presence on the Sunday?

A. None.

LORD HERMAND.—You said no mention was made of it till Monday?

A. Because it was on Monday we first saw his letter. No mention was made of it till we saw his letter. We did not know his name would be found there till we saw his letter.

Q. Did Mr Stuart say any thing upon that occasion?

A. No. He said he had not expected it.

Q. That was saying something.—Did he say any thing more?

A. Nothing more.

MR JEFFREY.—We may have occasion for Mr Spalding again.

(The witness was re-inclosed.)

EVIDENCE IN SUPPORT OF THE DEFENCE.

(Mr William Henderson, writer in Hamilton, cited as a witness for the prosecution, was called by the Crown counsel, and placed in the witness' box. But after some consultation among the counsel for the prosecution, they stated they had closed their case, and the Lord Justice-Clerk told the witness he might withdraw. Upon which Mr Moncreiff, as counsel for the pannel, said he would begin the evidence for the defence with this witness, and, accordingly, desired the witness to remain.)

WILLIAM HENDERSON SVOON.

Mr COCKBURN.—The Court and the Jury will take notice that the case is closed on the part of the prosecution, and that this is the first witness for the pannel at the bar.

Witness examined by Mr MONCREIFF.

Q. Are you a writer in Hamilton?

A. I am.

Q. Do you know William Murray Borthwick?

A. I do.

Q. Do you know he was the editor of a newspaper called the Clydesdale Journal?

A. I do.

Q. Have you been employed by him as his agent?

A. I have, since the month of December last. I had been his agent some time before—he had given me up—and then he began again to employ me in December.

Q. Did he put in your possession any papers for a particular purpose?

A. He did.

Q. About what time?

A. I think about the 29th of December, or thereabouts.

Q. For what purpose was it he gave you them?

A. To endeavour to get quit of certain actions of damages.

Q. When you got those papers, did you do any thing with the view of getting rid of the actions?

A. I did. I came to Edinburgh, and consulted a professional gentleman on the subject.

Q. About what time was that?

A. It was in the month of January; but I am not sure of the particular date.

Q. Had you any communication at all with Mr Stuart at that time?

A. None whatever.

Q. Did you know Mr Stuart at all?

A. I did not.

Q. Then when did you first know any thing of Mr Stuart?

A. It was about the beginning of the month of March.

Q. Had you come to Edinburgh at that time?

A. I had.

Q. Did you come on Mr Borthwick's business?

A. I did.

Q. What was it that brought you particularly at that period?

A. It was to obtain his liberation from jail. He had been imprisoned in Glasgow jail.

Q. Will you tell us how you came to expect to get him liberated? What was he imprisoned for?

A. For a debt by Mr Robertson, bookseller in Edinburgh, and by another bookseller there. Diligence had been raised for a large sum, I think L. 180, and it was restricted by a marking on the back to L. 50.

Q. How did you expect to get his liberation?

A. By a suspension and liberation, as I was satisfied the debt was not due.

Q. Before that imprisonment, were you at all employed about a process against the publishers of the Sentinel newspaper?

A. Yes, I was.

Q. Do you know there was an action brought by Mr Borthwick about the Sentinel, before the Magistrates of Glasgow?

A. I know there were two processes brought.

Q. But do you know there was one by Mr Borthwick for obtaining payment of bills?

A. Yes.

Q. Had it any other conclusion?

A. It had an alternative conclusion to obtain possession of the Sentinel Office.

Q. Do you know whether any judgment was pronounced on it?

A. Yes, I do know.

Q. What was the judgment?

A. It was ordering Alexander, that is, his partner, to make the payment concluded for within a certain space, six days I

believe, and failing his doing so within six days, authorizing Borthwick to take possession of the office.

Q. Have you seen that interlocutor?

A. Frequently.

(The process was handed to the witness, who read the prayer of the petition as follows:)

“ May it therefore please your Honours to appoint a copy
 “ of this petition, and of your deliverance, to be served
 “ on the said Robert Alexander, defender, and him to
 “ lodge answers thereto within a short space there-
 “ after; and on resuming consideration hereof, with or
 “ without answers, to decern and ordain the said de-
 “ fender forthwith to deliver to the petitioner valid
 “ bills, with sufficient security, for the said balance of
 “ L. 60 Sterling, at nine and twelve months from the
 “ said 27th of November; and failing his immediate-
 “ ly doing so, find that the defender has not imple-
 “ mented his part of said proffered agreement, and
 “ that, consequently, the pursuer cannot be held to
 “ have divested himself of his right, property, and in-
 “ terest, in said concern, which, accordingly, allow him
 “ to resume; or afford him such relief in the premises,
 “ or to do otherwise farther as to your Honours shall
 “ seem proper.

“ According to Justice, &c.

“ ALEX. URE.”

Q. See if you can find the judgment?

(Witness read the judgment as follows:—“ Having resum-
 “ ed consideration of the case, Finds, That the word ‘ pur-
 “ suer,’ in the second line of the interlocutor of the 29th
 “ of January, ought to have been ‘ defender,’ and is, ac-
 “ cordingly, correctly so written in the renewed order of
 “ the 4th of this month, and corrects the said interlocu-
 “ tor of the 29th of January accordingly; in respect the
 “ defender has failed to implement the said renewed or-
 “ der, ordains the defender, within six days from this
 “ date, to deliver the bills with security to the pursuer,
 “ concluded for in the petition, and, failing his doing so,
 “ decerns in terms of the other alternative conclusion
 “ thereof: Finally, remits to the auditor to tax the pur-
 “ suer’s expences.

“ 14th February 1822.

WILLIAM SNELL.”

MR MONCREIFF.—So the other alternative was, finding he was not divested, but might take possession?

Q. Does it consist with your knowledge that that interlocutor became final?

A. His agent in Glasgow told me so.

Q. But do you see any reclaiming petition?

A. There is none.

Q. Do you know that Mr Borthwick, in consequence of that judgment, took possession?

A. Yes, on the 1st March I received a letter from him, saying he had taken possession of it.

Q. When was he put in jail for the debt?

A. He was put in jail that night. He took possession in the morning, or in the course of the day, and was imprisoned on the morning of the 2d.

Q. How long was he in jail before you came to Edinburgh?

A. I came on the Tuesday following, I think on the 5th of March.

Q. You have explained how he was in jail,—and now we come to when you came to Edinburgh to get him liberated. To whom did you apply to get the suspension and liberation?

A. To Mr Spalding.

Q. Had you employed Mr Spalding before, as Mr Borthwick's agent?

A. I had.

Q. Did Mr Spalding prepare a bill of suspension and liberation?

A. He and I prepared it together.

Q. Was it presented?

A. It was.

Q. Did it go on to judgment?

A. Nothing farther was done on it. It was presented merely.

Q. Was it withdrawn?

A. It was withdrawn.

Q. Why?

A. Because it was understood from the Clerk of the Bills, that no order for his liberation could be granted without an answer.

Q. Then what did you resolve to do to effect his liberation?

A. We resolved to consign the money in the hands of the jailor, as the shortest way, under protest.

Q. Who was to consign the money ?

A. I was to consign the money.

Q. From money of your own ?

A. Yes. I was satisfied his claim was good, and I was to get from him an assignation of his claim of repetition. On coming to Edinburgh, I sent to Lanark to get a certificate whether or not Mr Robertson had reported a sale of Mr Borthwick's effects. I got also a statement of the debt for which Mr Borthwick had been imprisoned on the caption.

(The witness here was stating the particulars of the debt.)

MR MONCREIFF.—Q. You are giving us the particulars of the debt ?

WITNESS.—A. One reason why I was satisfied the debt was not due was, by seeing sums had been marked by the trustee for Borthwick's creditors as paid to preferable creditors, of whom I was one, and I knew I had not been paid.

Q. You were satisfied the debt for which he was imprisoned was paid ?

A. Yes.

Q. When were you first introduced to Mr Stuart ?

A. On the 7th of March.

Q. Did you ask any body to introduce you to Mr Stuart ?

A. I did.

Q. Whom ?

A. Mr Spalding.

Q. Did you give any reason for it ?

A. I did.

Q. Where was it you were introduced to him ?

A. In the Outer-House.

Q. Did you give any reason for wishing to be introduced to Mr Stuart ?

A. Mr Stuart had brought an action of damages against Mr Borthwick and other proprietors of the Sentinel, and Mr Borthwick wished to get quit of the consequences of that action—that was my reason for being introduced to Mr Stuart.

Q. When you were introduced to Mr Stuart, you mentioned the subject to him ?

A. I mentioned to him the situation Borthwick was in at the time.

Q. You mentioned that he was in jail ?

A. Yes ; and how he had been put in jail.

Q. And did you explain the state of the process ?

A. I did.

Q. Did you mention Borthwick had been imprisoned ?

A. I did. It was proper to mention this ; and I got evi-

dence that it was at the instigation of Alexander. I have evidence of that in my pocket at this moment.

Q. What day was this ?

A. On Thursday the 7th of March.

Q. What did Mr Stuart say to your statement about getting the process settled ?

A. He said he would make no promises to Mr Borthwick ; that he was satisfied Mr Borthwick was not the person who had written what he called libels upon his character ; that, on Borthwick's giving up the author, he would consider what he should do ; and, that it would depend on Mr Borthwick himself whether he would give up his action.

Q. What reply did you make to that ?

A. I said I had no doubt he would ; for he had asked me frequently to be introduced to Mr Stuart, to inform him he was willing to do so.

Q. Then, did any thing more pass at this time ?

A. I do not think any thing more passed at this time ; I do not recollect.

Q. What did you do farther about the liberation of Mr Borthwick ? When did you go to Glasgow ?

A. On the Saturday following, the 9th of March.

Q. Did you see Mr Stuart again ?

A. Not till the day I went.

Q. That was the Saturday. Now, you saw him that day, before going—Where ?

A. In the house of Mr Spalding—he called there.

Q. Did any body call with him ?

A. Yes ; another gentleman.

Q. Who ?

A. Mr Roger Aytoun.

Q. What passed at this meeting ? What conversation had you then ?

A. I do not recollect.

Q. Was any thing said about the suspension and liberation ?

A. Mr Spalding and I were then preparing it. We did not then know it might not be passed without an answer.

Q. Did Mr Stuart leave you on that occasion then ?

A. Yes, he did.

Q. Did you see him afterwards that day ?

A. Yes.

Q. Where ?

A. In his own house.

Q. Did you go to his own house ?

A. Yes, with Mr Spalding.

Q. Did Mr Aytoun go with you, or was he there ?

A. He went with us.

Q. Was any other person present ?

A. Nobody else.

Q. Had you resolved by this time on withdrawing the bill of suspension and interdict ?

A. Before going to Mr Stuart, we had resolved to go to Glasgow.

Q. Did Mr Stuart know this before you called ?

A. I cannot answer that question.

Q. Did you tell him you were going immediately to Glasgow ?

A. Yes.

Q. What passed about any body going with you ?

A. He said he would accompany us.

Q. Was there any proposal for Mr Aytoun going ?

A. It was proposed, but he said he could not get away.

Q. Was it said he would have gone if he could have got away ?

A. He said so.

Q. And Mr Stuart agreed to go with you ?

A. Yes.

Q. What was Mr Stuart's intention ?

A. Borthwick previously told me, that if he resumed possession after being liberated, he would endeavour to lay hold of the manuscripts that were libels, as he thought he had a right to them,—not to deliver them up, but to show them, in order to get rid of the actions.

Q. Mr Stuart went along with you ?

A. Yes, he did.

Q. Did you mention this to Mr Stuart ?

A. Yes.—And then he went along with us, in order, if Borthwick got those papers, he might take the offer of seeing those manuscripts.

Q. And Mr Stuart went accordingly ?

A. Yes.

Q. Before your going to Glasgow, had any thing been said about Sir Alexander Boswell ?

A. Never—not a word.

Q. It was on the Saturday you went to Glasgow. Was any thing done that night ?

A. I called at the jail that night, but did not get admittance. Then, the next morning, I had a conversation with Borthwick. I told him, Mr Spalding and I had come from Edinburgh, and I was to consign the money. He said, if he

was at liberty, he would resume possession of the office next morning at the usual hour.

Q. Do you know whether Borthwick had any keys in his possession belonging to the office?

A. No, farther than that he informed me he had.

Q. You did not see them?

A. No.

Q. Did you get him liberated on the Sunday?

A. Yes. When I called on him in the forenoon, he wished me to send a note to Hamilton to get down my clerk. When he was first imprisoned, he wished me to get my clerk to take charge of the office during his confinement. I declined to do that till he was liberated.

Q. And did he wish you to do that on being liberated?

A. He did, and I sent for my clerk.

Q. Had you occasion to apply to any body besides the jailor before you got the liberation?

A. I applied to Mr Alexander M'Grigor, writer in Glasgow.

Q. For what purpose?

A. To speak to Mr Reddie. He is the town clerk, the assessor.

Q. Did you go to Mr Reddie?

A. I did not. Mr M'Grigor went.

Q. Was the liberation got?

A. The money was consigned, and Borthwick got his liberty.

Q. Where did Borthwick go to when he got out of jail?

A. He came to the Tontine where we were.

Q. Did he come into the room where you were?

A. Yes, he did.

Q. Who were all present?

A. There were Mr Stuart, Mr Spalding, myself, and Mr Borthwick.

Q. Did he state then what he intended to do?

A. Yes, he did. He said he would go to the office in the morning, resume possession of it, and endeavour to get possession of the manuscripts. It is proper to mention, that, on the day he took possession of the office first, he got some manuscripts, and sent them to me at Hamilton.

Q. That was on the 1st of March?

A. On the 1st of March, before I came to Edinburgh.

Q. You had had no communication with Mr Stuart at that time?

A. None whatever.

Q. Did any of these manuscripts show the name of Sir Alexander Boswell?

A. None.

Q. You mentioned, that, in the Tontine, on the Sunday evening, he told you he would go in the morning and get possession. Did you advise him, or did he ask you whether he had a right to take possession of them?

A. He asked, and I said he had a right, under the decision of the magistrates.

Q. Did Mr Spalding concur with you?

A. He did. There were papers taken away on the Sunday the week before.

Q. Did Alexander make any complaint about that?

A. None that I heard of.

Q. Was there no application to the magistrates about it?

A. None that I ever heard of.

Q. You say Mr Stuart was in the room. Was he in the room the whole time?

A. He went to bed, and left Mr Spalding and my clerk, who had come down.

Q. When you were considering this matter, did Mr Stuart give any instructions?

A. None that I heard of.

Q. Did Mr Stuart give Borthwick any instructions?

A. None that I heard of.

Q. Did Borthwick sleep there?

A. He did.

Q. In the morning did Borthwick go to the Sentinel Office, or did any thing occur to make you believe so?

A. He went to the Sentinel Office with my clerk, and a man of the name of Loudon Robertson, to be witnesses of what he did.

Q. Did he come back again?

A. A short time after he went away, about half an hour, Loudon Robertson came to the Tontine with papers. These papers, he said, were from Mr Borthwick. On looking at them they turned out to be manuscripts of the newspaper.

Q. Did Borthwick come back himself?

A. He did. He said he was prevented from inspecting the manuscripts in the office by the violence of David Alexander, brother of his partner.

Q. Did he bring any more papers with him?

A. I believe he did.

Q. Were those papers examined in the Tontine?

A. They were examined in the Tontine. And Borth-

wick wished to send them back, after taking out those manuscripts he wanted, when my clerk came in, and said it was needless, as he had been turned out by the violence of David Alexander and Tod his agent. But Borthwick wished, after taking out the manuscripts wanted, to return the mass of papers.

Q. Then what became of the mass of papers?

A. It was resolved to put them into the hands of Mr Alexander Ure, Borthwick's agent in Glasgow, who was instructed to institute a complaint to the Magistrates of Glasgow, stating that those were in his hand, and the violence that had been used; there was such an action raised.

Q. When?

A. That very day.

Q. When you were examining those papers, did you discover that Sir Alexander Boswell's name was there?

A. After the various manuscripts of a particular hand-writing were put all together, on examination it was discovered that those manuscripts were believed to be in the hand-writing of Sir Alexander Boswell.

Q. Was there any letter with his name subscribed to it?

A. Borthwick was out for some time, and, on coming back, he was shown those manuscripts, and the post-mark of some of them. Some of the marks were cut out, and others were obliterated with ink. On examining the post-mark, I thought it was Edinburgh; but, on asking Mr Borthwick when he came in, he said it was Mauchline, and that the author he believed was Sir Alexander Oswald. But he added, if you will look among certain papers, you will find a letter from the gentlemen to whom I allude.

Q. And did you find that letter?

A. We found that letter. That letter was found, and it bore the signature of Sir Alexander Boswell. I was not acquainted with the hand-writing.

Q. When Mr Stuart saw the name of Sir Alexander Boswell, did he say any thing?

A. Nothing that I recollect of.

Q. You mentioned he never had spoken of him before?

A. He was astonished, he said he had never suspected him.

Q. What became of the selected papers?

A. They were put by me into the hands of Mr Spalding, at Mr Borthwick's request.

Q. As his own agent?

A. As his own agent ; and he was specially instructed not to part with them to any person but Mr Borthwick.

Q. But they had been shown to Mr Stuart. You did not understand that the injunction was to prevent them from being shown to Mr Stuart if he wished ?

A. They were to be shown to any person having an interest in them ; but not to be given away by Mr Spalding.

Q. You paid the money for liberating Borthwick ?

A. I did.

Q. From your own money ?

A. From my own proper funds.

Q. Did you speak to Mr Stuart about assisting you to pay the money ?

A. Never.

Q. Did he offer to assist you to pay the money ?

A. Never.

Q. Have you any person bound to repay it to you ?

A. No—except Borthwick. I have an assignation to his claim of repetition, and the claim against him.

Q. Have you any body else liable to your claim ?

A. Nobody else.

Q. You did not know Mr Stuart till you were introduced by Mr Spalding on the Thursday ?

A. I never saw him but once before.

Q. Had you ever any cash transaction with Mr Stuart ?

A. Never.

Cross-examined by Mr M'NEILL.—Q. Do you know that the process before the Magistrates of Glasgow was advocated ?

A. I know it was advocated subsequent to Borthwick's liberation.

Mr MONCREIFF.—Do you remember when it was advocated ?

A. On the 13th or 14th of March.

Q. After the liberation and papers were procured ?

A. I am sure it was after that.

JAMES GIBSON *sworn.*

Examined by Mr COCKBURN.

Q. You are acquainted with Mr Stuart ?

A. I am.

Q. And with Mr Roger Aytoun, writer to the signet ?

A. Yes.

Q. Did you ever perceive any articles in the Sentinel

newspaper, or in the Beacon, which you regarded as offensive to you or to Mr Stuart?

A. A great many, Sir.

Q. Had you and Mr Aytoun ever any conversations about discovering the authors of those paragraphs?

A. Very many.

Q. Mr Aytoun is the agent of the family of Hamilton?

A. He is, Sir.

Q. Do you recollect of any attack being made on Mr Stuart in the first number of the Sentinel?

A. Certainly I do.

Q. Which you considered a false attack?

A. A most atrocious libel.

Q. You have heard, I presume, of a person of the name of Borthwick, one of the editors of the Sentinel?

A. I have.

Q. Do you recollect having any conversations with Mr Aytoun in the beginning of March last, about that person?

A. Mr Aytoun told me about the beginning of March.

Q. Was Mr Stuart present on this occasion?

A. He was certainly present.

Q. Tell us the purport of what took place when Mr Stuart was present?

A. Mr Aytoun told us he understood Borthwick had got possession of all the manuscripts of the libels that had appeared in the Sentinel.

Q. That was about the beginning of March?

A. One of the first days of March.

Q. Did that turn out to be true at that time?

A. For some days I conceived it to be true; but, on the last Thursday of the Session, Mr Stuart told me it was a mistake;—that Borthwick had got possession of them, but had left them locked up in a safe; and that he had, since that time, been thrown into prison.

Q. Was that on Thursday?

A. The Thursday before the rising of the Court.

Q. Had you any farther talk with Mr Stuart about this discovery?

A. On the Thursday, the conversation was pretty general in the morning; and afterwards Mr Stuart told me, that the agent of Borthwick had come to town, and waited upon him in the Parliament House, and had offered to give up the manuscripts of the libels against him, if he would withdraw his action of damages.

A. Did Mr Stuart say he had agreed to abandon the action?

Q. He said he had positively refused to come to any understanding on the subject, but had desired them to show him the manuscripts of the libels, when he would consider what should be done.

Q. You were aware, at this time, that Mr Borthwick was in jail at Glasgow?

A. I had heard he was in jail, and had been for some days.

Q. Did you give any advice to Mr Stuart how to act?

A. Not on the Thursday; but, on the Saturday, we had farther conversation, and I understood there was a proposal to give in a bill of suspension and liberation on the ground of the debt for which Mr Borthwick had been incarcerated not being due. I said I thought it was a pity to temporise in a matter of this kind,—that I thought, from the character I had heard of Alexander, he would not scruple to take means to get possession of, and destroy, the manuscripts. I said to Mr Aytoun and Mr Stuart, that, in my opinion, some one should go to Glasgow instantly, pay the debt, procure Mr Borthwick's liberation, and secure the papers.

Q. Did you offer to pay the debt yourself rather than this should not be done?

A. I did not offer; but I said, I would much rather pay the debt than run any farther risk of losing the papers.

Q. Had you been consulted about a suspension and liberation for Borthwick?

A. They were talking of giving in such a bill, which I thought was temporising a great deal more than was necessary.

Q. Were you aware there had been an action or process carrying on at Glasgow between Borthwick and Alexander, as to Borthwick's right to resume possession?

A. I was. I had been told that the Magistrates had decreed in Borthwick's favour, and that Alexander having failed to fulfil the conditions which had been stipulated between the parties, Borthwick was authorized by the Magistrates to resume his rights as a partner.

Q. And did you understand that the interlocutor was final?

A. Yes.

Q. Had you any doubt of Borthwick's right to resume possession?

A. None.

Q. Do you know if Mr Stuart had any doubt ?

A. I never heard any doubt stated by any body.

Q. In short, your only fear, and cause of great dispatch, was, lest Alexander should destroy the papers ?

A. My only reason.

Q. Do you know whether Mr Stuart went to Glasgow or no ?

A. I knew afterwards. I did not know, when I parted with him, that he was to go to Glasgow.

Q. When did you see him again ?

A. On Monday, about four o'clock.

Q. Did he give you any account of his proceedings ?

A. He told me that Borthwick had put a number of papers into the hands of his agent, which he (Mr Stuart) had examined ; and that, to his astonishment, he had found that Sir Alexander Boswell was the author of the libels against him.

Q. He stated he not only found, but was astonished at finding, that Sir Alexander was the author ?

A. He was astonished to find that Sir Alexander was the author.

Q. Had you and Mr Stuart, before this, much confidential conversation about these libels ?

A. Daily for months.

Q. Had you many conjectures about the author ?

A. Many.

Q. Did you ever suspect Sir Alexander as the author of them ?

A. Never.

Q. Do you know if Mr Stuart wished to compare any of the manuscripts he had found with the articles in the Sentinel newspaper ?

A. I gave him my copy of the Sentinel for that purpose.

Q. You were possessed of a copy ; how did you get it ?

A. From seeing the libel in the first paper, I considered what the nature of the publication was likely to be, and I caused it to be regularly purchased for me in Glasgow, and marked.

Q. I wish to identify the copy of the paper you showed Mr Stuart.

(The paper was handed to the witness.)

A. That is the copy I purchased.

Q. He got that from you to compare the manuscripts with ?

A. He did, when he returned it to me, he told me he had marked all the copies of which he conceived the manuscripts to be in the hand-writing of Sir Alexander Boswell ; and they are marked in that copy.

Q. You are aware this discovery led to a challenge of Sir Alexander by Mr Stuart ?

A. Yes.

Q. You are aware that that affair took place on the morning of the 26th of March ?

A. Yes.

Q. When had you seen Mr Stuart previously ?

A. At eleven o'clock of the evening before.

Q. Did he then tell you, on what day he believed that that meeting was to take place ?

A. He told me it was to take place on the Thursday following.

Q. That is, two or three days after you were talking to him ? In what condition, in what state of mind, I mean, was he at the time ?

A. Particularly calm and collected.

Q. Did he appear to be actuated by any malice or rancour against Sir Alexander ?

A. Not the least

Q. Did he describe his feeling at all to you ?

A. He described himself as being placed in an unpleasant situation, from which it was utterly impossible to relieve himself in any other way than by the mode he had taken.

Q. When did you next hear any thing more from Mr Stuart ?

A. About eleven o'clock, next day, his clerk called upon me, and delivered a sealed packet.

Q. Was there any letter to you with that sealed packet ?

A. There was.

Q. Was the sealed packet addressed ?

A. It was addressed to me.

Q. Do you know the contents of the letter ? Have you the letter now ?

A. I have it with me.

Q. Have you any objection to show it ?

A. Not the least.

Q. Read it, if you please.

“ MY DEAR SIR,

“ The other party saw the necessity of instant action, owing to circumstances not known when I saw you. Be so

kind, if I am completely done for, as to have the inclosed conveyed, according to direction, within four days after this day, not sooner than the third.

“ Be quiet till you hear.

“ Yours most sincerely,

“ JA. STUART.

“ *Charlotte Street,*

“ *Four o'clock Tuesday Morning.*”

Received at 11 o'clock A. M. 26th March 1822.—J. G.
(Addressed on back, “ *Most Private. Jas. Gibson, Esq.*”

WITNESS.—The inclosure contained a packet addressed to Mrs Stuart.

Q. Is the inclosure there? I should wish to see that inclosure.

A. I should mention, that, after the meeting had taken place, Mr Stuart came to my house; and when I saw him safe, I gave it back to him. He opened it in my presence, and I have it here.

Q. Be so good as read it.

(This was a short note to Mrs Stuart, dated Tuesday morning, which Mr Gibson read.)

Q. When did you next see Mr Stuart himself?

A. At two o'clock of that day.

Q. Upon Tuesday?

A. Tuesday, after the affair.

Q. Where did you see him?

A. When coming down St Andrew's Street I saw him coming out of my chambers; and, when he saw me, he turned short, and instantly ran up into my room.

Q. What took place then?

A. I followed him as fast as I could. I shut the door, and asked what had happened. He ran into a corner of the room, covered his face with his hands, and burst into tears. When he was a little composed I again put the question. He said he was afraid Sir Alexander was mortally wounded. He was in the most complete agony of mind.

Q. Did he give you any account of what had happened on the field?

A. After some time, I asked him some questions, and he answered those questions I put to him.

Q. Did he express any wish, that he had missed Sir Alexander?

A. He did.

Q. What did he say?

A. He said he had taken no aim. He wished to God he had taken an aim, for, if he had, he was certain he would have missed him—that he had never fired a pistol, on foot, in his life before.

Q. Did he say that any thing particular had passed between him and Sir Alexander on the ground? He said that he had asked Lord Rosslyn, if it would be proper in him to show the usual mark of civility to Sir Alexander, and that Lord Rosslyn having approved of it, he accordingly made an advance, and was in the act of putting his hand to his hat when Sir Alexander turned his head from him.

LORD ADVOCATE.—I am extremely averse to interfere, but this is not a matter which touches the prisoner; and I submit to the consideration of the gentlemen opposite, how far they should proceed with it.

Mr JEFFREY.—I am quite sure Mr Stuart was mistaken in supposing that Sir Alexander had intentionally turned from him. I infer from the testimony of Lord Rosslyn, that there was an advance of that kind, but that it had not been observed by Sir Alexander. More than that we never proposed to establish.

Mr COCKBURN.—Did you give Mr Stuart any advice as to what he should do?

A. I said that he must instantly leave the country,—that his remaining would only subject him to very unnecessary imprisonment.

Q. Was he himself eager to go, or to remain?

A. He positively refused at first to go. He said, wherever he went, he would be miserable, till he knew Sir Alexander's fate, and he would not go till he should know it.

Q. Did you urge him again in spite of that, to go?

A. I pressed him in the strongest manner. I said, no time should be lost in giving him information of Sir Alexander, but he must leave the country. He at last agreed. He said Mr Liston had a better opinion of the case than Mr Wood, and he hoped, in God, it would turn out to be well-founded.

Q. Had he made any preparation in the way of money for going?

A. No. I went to the bank, and got money for him.

Q. That was necessary for his going?

A. It was necessary for his going.

Q. He made it a condition of his going that you would give notice of his being willing to stand trial?

A. He did. Afterwards I met him at his own house, and the last words he said were, Remember to give notice that I shall be ready to stand trial.

Q. Did you give notice to that effect to any public officer ?

A. Next morning, I saw Mr Sheriff Duff between 11 and 12 o'clock, and I gave him the notice.

Q. Verbally ?

A. Verbally.

Q. That was upon Wednesday the 27th ?

A. Wednesday the 27th.

Q. Did you receive any notice soon thereafter upon that matter ?

A. Upon Thursday the 28th, I sent a notice to the Star and Advertiser newspapers, that that notice had been given, and, on the 29th, I received a note from Mr Rolland, Crown Agent, saying, that it had been stated in the newspapers, that Mr Stuart had given such notice, and desiring to know to whom he had given the notice.

Q. Have you Mr Rolland's letter with you ?

A. I believe I have.

Q. Please read the letter ?

“ Edinburgh, 29th March 1822.

“ DEAR SIR,

“ In consequence of the paragraph in the Edinburgh Advertiser of this date, stating, that Mr James Stuart, W. S. had announced to the proper quarter, (as the paragraph implies,) that he was ready to stand his trial whenever he is called upon, I am directed by the Crown Counsel, who are aware that you had communication with Mr Stuart after Sir Alexander Boswell was wounded, to apply to you to know whether Mr Stuart authorized any such notice and intimation to be made for him, and if so, to whom such notice has been given.

“ I am, DEAR SIR, your most obedient humble Servant,

“ JAMES GIBSON, Esq. W. S.

AD. ROLLAND.”

Q. Did you answer that letter ?

A. I answered it the same day.

“ Edinburgh, 29th March 1822.

“ In answer to your letter of this date, I must beg to refer you to the conversation I had with Mr Sheriff Duff, on Wednesday last.— I am,” &c.

Q. Did you ever make any other applications for getting the trial on ?

A. I wrote a letter either on the 4th or 5th of April, beg-

ging the trial might be brought on; and I received a letter from Mr Rolland on the 6th.

“Edinburgh, 6th April 1822.

“DEAR SIR,

“I prefix a copy of a letter I received from the Solicitor-General this forenoon.

“I am, DEAR SIR, your most obedient Servant,

“JAMES GIBSON, Esq.

AD. ROLLAND.”

The Solicitor-General's letter referred to was as follows :

“Edinburgh, 6th April 1822.

“I understand that Mr Gibson has intimated to you, that Mr Stuart is ready to stand trial when indicted.

“You will take an opportunity of explaining to Mr Gibson, that it is not intended to raise an indictment against Mr Stuart until he is in custody, and has been judicially examined. It is obvious that, by keeping out of the way till the day of trial, he would avoid a judicial examination, and there is no reason for departing in this case from the ordinary rules of criminal procedure. It is not customary to raise an indictment, without previously examining the criminal, except in cases where the party has escaped, and does not mean to stand trial.”

Q. Did you answer that letter ?

A. I saw Mr Rolland, and remonstrated on the subject. And I afterwards wrote him upon the 15th of April, as follows :

“I beg again to say to you, what I communicated to Mr Sheriff Duff on the 27th of March, and to you in my letters of 29th March and 5th April, that Mr Stuart will appear to stand trial, whenever the Crown Counsel shall think proper to indict him.

“Since the date of these letters, I have received yours of the 6th, with a copy prefixed of a letter from the Solicitor-General, in which he desires you to inform me, that it is not intended to raise an indictment against Mr Stuart until he is in custody, and has been judicially examined—that by keeping out of the way till the day of trial, he would avoid a judicial examination,—and there was no reason for departing in his case from the ordinary rules of criminal procedure. It was not customary to raise an indictment without previously examining *the criminal*, except in cases where the party had escaped, and did not mean to stand trial.

“ I beg to submit this resolution to the farther consideration of the Crown counsel. You know that, in England, the invariable practice in cases of this kind is to indict instantly, without regard to the *person accused* being in custody,—and, if I am not mistaken, a practice has prevailed, in the few cases that have occurred in Scotland, even more favourable to such persons.—I am told, that in different cases, particularly that of Glengarry, indictments have been insisted in without the person accused being in custody ;—and that, in other cases, such as Lieutenant Charles Grant for killing Mr Fowke, and Captain Maclean for killing Lieutenant Shand,—not only was there no imprisonment of the parties, but no indictment was ever raised.

“ In these circumstances, I trust that the Crown counsel may see the propriety of Mr Stuart being instantly indicted, when they may depend upon his appearance. Indeed, nothing but a trial can clear up this most unfortunate business in a manner at all satisfactory to him. But, if the Crown counsel shall still determine not to indict Mr Stuart until he be in custody, I hope that they will give an assurance that there shall be no unnecessary delay, but that the trial shall be brought on as soon as can reasonably be expected. Trusting to your giving me an immediate answer, I remain,” &c.

Q. Did you get an answer ?

A. I received an answer on the 22d of April in the following terms :

“ 22d April 1822.

“ In a letter I have this day received from the Lord Advocate, he directs an indictment to be forthwith raised against Mr Stuart, and served ; and that, when served, the trial will proceed on the expiry of the usual *inducia*, unless Mr Stuart should himself ask for delay, or the ends of justice should demand it. I am,” &c. “ *P. S.*—The Court of Justiciary does not meet till Monday the 20th of May, and that day at present is allotted for the trial of Alexander M. Anderson. Probably Monday, the 27th May, may be taken for Mr Stuart’s trial.”

Q. Did you return an answer to that letter, or again write to Mr Rolland ?

A. I wrote several letters to, and had several meetings with, Mr Rolland. I wrote him again on the 18th May as follows :

" 18th May 1822.

" I am extremely mortified to learn from your clerk to-day that Mr Stuart's trial is again delayed.

" You know that, on the 27th of March, I intimated to Mr Sheriff Duff that Mr Stuart would be ready to take his trial whenever it was thought proper to bring it on. This resolution I again communicated to you on the 4th of April, and very often afterwards.

" On the 24th of April the Lord Advocate assured a friend of Mr S.'s that he had some time before written from Weymouth to desire that the trial be proceeded in without delay; and that, in answer to a letter from Scotland, of date the 16th of April, saying that there was no reason for hurrying it on, his Lordship had again written, repeating the order to proceed as soon as possible.

" On the 22d of April you wrote me that you had received the Advocate's orders to raise the indictment forthwith, and that it would be proceeded in without delay, " unless Mr Stuart should himself ask for delay, or the ends of justice required it;" and you add in a P. S., " that probably the 27th of May may be taken for Mr Stuart's trial." You afterwards wrote that it could not take place sooner than the 3d of June; I am now informed by your clerk, that, " on account of the Solicitor-General having only returned from London five days ago, the trial cannot take place sooner than the 10th of June," and no assurance has been given that it will certainly take place on that day. I need not repeat to you what I have so often expressed—the unceasing anxiety of Mr Stuart to have the trial brought on as speedily as possible, and the extreme prejudice which he suffered in many points of view from the delay."

Q. Tell me, in general, did you continue, to the last, endeavouring to bring on this trial?

A. I did.

Q. You are not aware, Mr Stuart absconded or fled from justice?

A. Certainly not.

Q. Were you ever employed to act as agent for Mr Stuart since the indictment was raised?

A. Never. I never intended doing so.

Q. You have known Mr Stuart a great many years?

A. Most intimately.

Q. In public and in private?

A. In public and in private.

Q. You will be so good as say, what your opinion of his character is, principally as to peaceableness and good temper?

A. He is one of the kindest-hearted, and best-tempered men I ever knew.

Q. Have you ever known him given to quarrelsomeness?

A. Never.

Q. Do you know him to be a person, or the reverse, who is apt to make his politics disturb his private friendships?

A. I never knew him introduce politics so as in any way to interfere with private friendship.

Q. What is the date of the last letter, written by you, relative to bringing on this trial?

A. 18th May.

Q. Please, Sir, read that letter once more.

(The letter again read by the witness.)

Mr MONCREIFF.—You have a volume of the Sentinel in your hand?

A. Yes.

Q. You spoke of the first number of Sentinel. What article in that number did you refer to?

A. It bears the title “James Stuart and the Lord Advocate.”

Q. You are aware Mr Stuart went to France?

A. Yes.

Q. You have mentioned repeated solicitations were made by you on his part to bring on the trial?

A. Yes.

Q. Was this in consequence of the instructions when he left you, or did he renew them?

A. They were originally upon his verbal instructions, and I afterwards received a letter, hoping I had given the necessary intimation.

Mr LISTON, Surgeon, *sworn*.

Examined by Mr MONCREIFF.—Do you know Mr Stuart?

A. Yes.

Q. Do you remember his calling upon you about the end of March last?

A. Upon the 26th.

Q. At what hour?

A. At an early hour in the morning, a little before five.

Q. Did he mention the business on which he called?

A. He did not. He wished me to go to the country with him.

Q. Did you go along with him?

A. Yes.

Q. In the course of the journey did he explain the purpose of his journey, or did you find it out?

A. I understood what the object was. He did not tell me till I got to the other side of the water. I guessed his purpose.

Q. Did he mention the party he was to meet?

A. Upon the other side of the water he did.

Q. Did he say any thing particular about what might be the event?

A. He said there was no other course left for him but the one which he had taken; and said, he had no animosity towards Sir Alexander Boswell. He seemed to apprehend danger to himself.

Q. Did he say any thing as to his wish to kill his opponent or otherwise?

A. He said Sir Alexander was a relation of his,—that he had no animosity against him,—that he did not wish to injure him in any way. He mentioned something of a duel which had taken place between Captain Ayton and another gentleman, and hoped no greater damage than happened on that occasion would be the result of the intended meeting, one of the parties to the duel he mentioned having been wounded in a toe.

Q. Where did you go to?

A. Hillside.

Q. And what took place at Hillside? How long did you stay there?

A. About an hour.

Q. What was Mr Stuart engaged in doing there?

A. He was engaged among his papers. He wrote some, to one of which I put my signature. I understood it to be his settlement. He put some of the papers in a drawer in the sideboard.

Q. Did you see him put up any keys?

A. He put up a number of papers. I was not attending much to what he was doing.

Q. Did he give you any note or memorandum?

A. On the road to Auchtertool he did.

Q. Did he tell you any thing about it?

A. To read it in case he should be hit.

Q. Have you got that memorandum?

A. Yes.

Q. Will you be so good as read it to us if you please?

(Witness read as follows:)

“ If I am hit, and it is wrong to take me to Edinburgh, I wish, if not risking too much, to be taken to Hillside, where every thing is comfortable, and where I will recover far sooner than any where else.

“ If my senses remain, and I am not moribund, send as fast as possible for my wife, with all due caution. She is, of all her family, that one who would the least wish me to live with a dishonoured name:

“ I have a dislike to be over-bled.

“ J. S.

“ *Hillside, Tuesday morning,
March 26.*”

Q. Were there any arrangements made about the duel, at Hillside, before you left it?

A. Not that I know of.

Q. Then you went along with him to Auchtertool?

A. Yes.

Q. How did Mr Stuart appear at that time; was he much agitated, or was he cool?

A. Quite cool.

Q. Did you see the gentlemen take their ground when it was measured?

A. Yes.

Q. Did you see them fire?

A. I did not. I turned my back.

Q. You saw Sir Alexander afterwards?

A. Yes.

Q. And did you do any thing professionally?

A. I removed some portion of the broken bone, and examined the wound as far as could be done.

Q. Did you remain or did you go away after that?

A. I remained and assisted in carrying him to Balmuto. I remained there about an hour and a half.

Q. Then you came away, leaving Dr Wood there, I suppose?

A. Yes.

Q. And you returned to town along with Mr Stuart?

A. Mr Stuart had gone before; I returned to town by myself.

THOMAS ALLAN, Esq. Banker in Edinburgh, *sworn.*

Examined by Mr JEFFREY.—Do you know Mr Stuart?

A. I do.

Q. You heard of the unfortunate meeting between him and the late Sir Alexander Boswell recently after it happened ?

A. I did.

Q. You heard of his death in London ?

A. I was told he was dead the day before I left London.

Q. Had you then heard of his death from any certain authority ?

A. I had no certain knowledge of his death at that time ; but it was reported in such a manner, that I rather suspected it was the case.

Q. You had heard Mr Stuart had gone to France ?

A. I heard he had gone the day before.

Q. You saw some of Mr Stuart's friends in London, and carried some message to him ?

A. I did.

Q. Where did you find him ?

A. At the Hotel De Meurice at Calais. I carried him his passports. The object of my journey was partly to convey his passports to him. I had learnt from Sir Ronald Ferguson that he had left London without his passports.

Q. How did Mr Stuart receive you, and what conversation had you with him ?

A. It was necessary to give that explanation of my coming there ; and, after I put the passports into his hands, he said to me, What news do you bring me ? I immediately understood from him that his question related to Sir Alexander Boswell ; and I stated, that I was sorry to say the news were bad for him. Then, said he, Sir Alexander is dead. I replied, such was the report in London the day I left it.

Q. Did he say this in a calm, or in an agitated and disturbed manner ?

A. With a great deal of anxiety in his manner. When I told him he was dead, he was in very great agitation, and burst into tears.

Q. Did any thing more pass ? What did you say upon that ?

A. He continued in great distress. I thought it right to recall him a little to himself, and pointed out to him the manner the business had been forced upon him. True, he said, but remember his poor wife and family.

Q. And did he continue agitated and distressed ?

A. He certainly did for a considerable time.

Q. Were you much with him ?

A. We were together for a fortnight or three weeks.

Q. Did he still appear to be much distressed at what had happened?

A. His mind was constantly returning to it. Whenever the conversation flagged, he seemed constantly absorbed in thought.

Q. You were the first person brought him this intelligence?

A. Certainly.

Q. Did Mr Stuart express any desire to remain out of the country longer than was necessary to save himself from imprisonment?

A. Quite the contrary. He always expressed his anxiety to return, and stand trial, if his friends would allow him.

Q. Was there any report that it was the intention of Government to apply to the Government of France to have Mr Stuart taken up?

A. I believe such a report existed.

Q. Was any application of the kind made to your knowledge?

A. No. While in Paris, Mr Stuart received a letter from Mr Gibson, stating the delay of the trial. Mr Stuart wished to have an interview with the English Ambassador. He waited on Mr Crosby, and explained to him the object of his wish to have an interview with the Ambassador himself. He went to the Ambassador's, and had an interview with Sir Charles Stuart.

Q. Did you go with him?

A. I went to the Ambassador's Hotel with him, but I did not see Sir Charles.

Q. Do you know if he afterwards came to Calais to be in more near intercourse with his friends?

A. He did.

Q. Did you know he wrote to the Ambassador to that purpose?

A. He wrote a letter before he left Paris to the Ambassador, intimating his intention of removing to Calais. * I saw that letter, and know it was delivered. It stated he would always be ready to attend, when called upon.

JOHN CLERK, Esq. of Eldin, Advocate, *sworn*.

Examined by Mr MONCREIFF.—

Q. Do you know Mr Stuart?

A. Yes, I am acquainted with Mr Stuart.

* This Letter will be found in Appendix, No. XII.

Q. Did you meet with him in London soon after this event took place?

A. Yes, Sir.

Q. Did you afterwards see him in Paris?

A. Yes.

Q. When you saw him in London, it was not known whether Sir Alexander was dead or not?

A. It was not known.

Q. When you saw him in Paris, did you give him the intelligence of Sir Alexander's death?

A. I did not give Mr Stuart the intelligence of the death personally, but I have reason to believe I was the means of communicating the intelligence to him; and I saw him soon afterwards.

Q. How did he appear to be affected by the intelligence of the death of Sir Alexander?

A. He appeared to me to be very deeply affected. I saw him twice before the intelligence of the death was received, and he was apprehensive bad news might arrive; but when I saw him after the intelligence of the death had been communicated to him, he appeared to be very deeply affected indeed. He shed tears, and was much moved. He was not so much so afterwards, though he remained serious.

ROBERT MACONCHIE, Esq. sworn.

Examined by Mr MURRAY.—

Q. Were you acquainted with the late Sir Alexander Boswell?

Q. I was.

A. You were well acquainted with him?

Q. Very well acquainted with him.

A. You received a letter from him in the month of March last?

A. I did.

LORD ADVOCATE.—I hope the Counsel for the defence will not deem it necessary to have that letter read: it is a private confidential letter. If they do, there it is.

Mr JEFFREY.—I can assure the Court and the learned Gentlemen opposite, that we have no desire to do more than we feel to be necessary for the defence of the prisoner; and I would be sorry to do any thing that could excite pain to the friends of the deceased, or doubt of the propriety of our conduct in the minds of the learned Gentlemen opposite, whose

good opinion I am anxious to possess. On the purport of that letter I will make but one remark. The letter shows that Sir Alexander considered himself as liable to the call he received, as bound to answer it, and particularly a call at the instance of Mr Stuart,—that, at the time he wrote that letter, he contemplated the possibility of putting Mr Stuart's life in hazard. And we, therefore, think it material to prove this, and to have the letter produced also, as another specimen of Sir Alexander's penmanship, in order to complete the proof of the hand-writing, and to show, *comparatione literarum*, that the other documents founded on are genuine.

With these views, whatever my own inclination may be, I cannot abstain from calling for production of that letter. And I hope I shall not be thought to have done anything improper or unnecessary on this occasion.

LORD JUSTICE-CLERK.—What is the date of the letter?

A. The 24th of March.

MR MURRAY.—When you received it, did you understand it to be from Sir Alexander?

A. I supposed it to be so, and I answered it to Sir Alexander.

Q. Did you ever receive any subsequent communication from Sir Alexander Boswell?

A. No, none.

MR COCKBURN.—All of us, the Counsel for Mr Stuart, are of opinion, that every word of that letter is necessary for his defence, and ought to be read.

(The letter, which will be found in the Appendix, No. IX. was read.)

DR COVENTRY of Shanwell, Professor of Agriculture in the University of Edinburgh, *sworn*.

Examined by MR JEFFREY.—

Q. Are you acquainted with Mr Stuart, the pannel at the bar?

A. I am.

Q. Have you been long acquainted with him?

A. Eighteen years.

Q. Have you known him in public and in private society?

A. Very well in both.

Q. I ask you what is your opinion of his temper and disposition, especially as to violence or moderation.

A. His temper is of the very best.

Q. Have you had occasion to meet him in pretty large meetings, where there was talk and raillery going on?

A. Yes.

Q. Is he a safe man to joke or tease a little?

A. Perfectly safe.

A. Very conciliating in his disposition and manners?

A. Very.

Q. Did you ever happen to see him where there was any disposition to quarrel among others?

A. Yes.

Q. And how did he comport himself?

A. He was always disposed to peace.

Q. Did you know the late Sir Alexander Boswell?

A. Very well.

Q. Had you been long acquainted with him?

A. For about twenty years.

Q. Had you ever any correspondence with him?

A. A great deal of correspondence.

Q. Did he attend your lectures?

A. I believe he did.

Q. Are you acquainted with his hand-writing?

A. Yes.

(The signed letter, the song, and the letter signed Ignotus, were shown to the witness.)

Q. Look at the address of the one dated "Dumbarton." Is that his hand-writing?

A. It is his.

Q. The letter signed Alexander Boswell—is that his genuine hand-writing?

A. Yes.

Q. There is a single sheet—a metrical composition—look at it, and turn to the address?

A. The beginning of the song is less like his hand-writing; but the end becomes more like it. But I believe the whole to be his. The B's are the same, and the C's and Y's throughout the paper are the same.

(Other papers here shown to the witness.)

Q. Have you seen those papers before?

A. No.

Q. Look at the address of the song, and of the letter signed "Ignotus." Do they appear the same?

A. I think they are quite the same hand-writing.

Q. Look at that letter?

CROWN COUNSEL.—What letter is that?

Mr JEFFREY.—We have hitherto only been examining the hand-writing of the documents libelled, and produced by the prosecutor. Along with our defences, and in our defences, we explain the purposes for which we bring forward

certain other manuscripts; two more, one signed by the fictitious name of "Mark Tod," that which I have now in my hand, and the other headed on the top, "The late Lieutenant James Stuart." And we have stated, both in the defences, and in the opening to-day, that Mr Stuart was decided to require the explanation of and to come to the meeting with Sir Alexander Boswell, not only on account of the evidence libelled, but on account of other attacks, the evidence of which was in his hands at the time that Lord Rosslyn communicated with Sir Alexander and Mr Douglas. If we find no objection to it, I intend to prove that these two, being original articles of what were published in the Sentinel, are also in the hand-writing of Sir Alexander Boswell.

MR M'NEILL.—If these documents are merely for establishing the identity of Sir Alexander's hand-writing, we do not object.

MR JEFFREY.—We shall take no such objection. I intend to found upon them in corroboration of our statement, that beside the papers taken by Lord Rosslyn to Mr Douglas and Sir Alexander, there were other writings of Sir Alexander's offensive and injurious to Mr Stuart. He obtained the copies of other articles, in reference to which he thought himself justifiable in calling on Sir Alexander to avow whether he was the author of what had been founded upon.

LORD ADVOCATE.—We certainly mean to object to this course. We submit to the Court, that the only documents which can bear upon this case as a justification of the gentleman at the bar, are those which were founded upon, and produced, and stated to the late Sir Alexander Boswell, and as to which he was called to stand to the consequences. And we humbly submit, that this gentleman is not now to produce documents which were not produced to the gentleman now deceased, and as to which no duel took place. It is quite plain, if these had been founded upon, Sir Alexander might either have denied them to be his, in consequence of which no evidence of any kind, according to Lord Rosslyn, would have been received to the contrary, or he might have made such an apology with respect to them as would have been satisfactory. Now, to bring forward these documents in justification of the conduct of the prisoner at the bar, would be a most indecorous proceeding, and such as cannot be allowed at this stage of the proceedings.

LORD JUSTICE-CLERK.—In the first place, the Court must hear the defences. Let us hear the defences read, and see if these documents are therein referred to.

(Here the defences were read.)

LORD HERMAND.—The Prosecutor is not allowed to prove any thing that is not in the indictment ; but can it be said a pannel is confined to any thing a Prosecutor is willing to produce ? He has here produced the articles mentioned to Sir Alexander Boswell ; but is he entitled to limit the productions to what might appear to him to be of an injurious nature. Unless we go some centuries back, we cannot receive such a rule.

LORD JUSTICE-CLERK.—I see no difficulty here. The present question relates to articles which are alleged to be the manuscripts of other articles in the publication alluded to, and which the prisoner says he will prove to be of the hand-writing of the deceased. No doubt the Public Prosecutor has founded upon certain articles in the hand-writing of the deceased, or some of which he admits, and others not, to be of his hand-writing, and which are alluded to in the conversation which preceded the duel. But, most unquestionably Mr Stuart, standing upon his defence, cannot be confined to those papers produced by the Public Prosecutor, but may extend his defence to other papers which he conceives to have been of the hand-writing of the deceased. It does not appear to me that he can be restricted to the papers produced by the Public Prosecutor.

LORD GILLIES.—It is quite clear to me that the pannel is entitled to prove his defence. I coincide with the opinion your Lordship has given.

Q. Dr Coventry, look at the hand-writing of that paper, signed “ Mark Tod,”—does it appear to you to be Sir Alexander Boswell’s hand-writing ?

A. I think it is his hand-writing.

(Another paper, “ The late Lieutenant James Stuart,” was handed to the witness.)

Q. Have you formed any opinion as to the hand-writing of that ?

A. It is the same hand-writing.

Q. On examining those papers, you are satisfied they are the same hand. Have you seen them before ?

A. I think them the same hand ; but I did not see them before.

CHARLES DALRYMPLE GAIRDNER, Esq. Banker in Kilmarnock, *sworn*.

Examined by Mr JEFFREY.

Q. Where do you live ?

A. At Kilmarnock.

Q. You are a manager of the Banking House of Hunter and Company ?

A. Yes.

Q. Were you well acquainted with the late Sir Alexander Boswell ?

A. Yes.

Q. You had served in the same troop of cavalry ?

A. Yes, I had.

Q. For many years ?

A. For six years.

Q. Did you correspond with him ?

A. Yes ; and I had occasion to know his hand-writing otherwise.

Q. Did he do business with your bank ?

A. He did business with our bank at Ayr.

Q. But you know his hand-writing. Have the goodness to look at that letter ? (The signed letter was handed to the witness.)

Q. Do you take that to be his genuine hand ?

A. That is his hand.

(The witness was then asked to look at the letter signed " Ignotus.")

Q. Does that appear to be the same, or a different hand ? Look at that other ? Is that the same hand-writing ?

A. It appears to be the same hand-writing.

(The song was handed to the witness.)

Q. Look at the latter part of that ? Is it the same hand ?

A. This writing was formerly shown to me, and, at first sight, I could not identify the hand-writing at all ; but, upon comparing it, and examining it minutely, I am satisfied it is the hand-writing of Sir Alexander Boswell, particularly the latter part of it. The first part of it is disguised ; the latter part of it, I am certain, is of his hand-writing.

Q. Compare the address of the song with that of the other papers lying by you ? Do they appear to be different ?

A. They appear to be of the same hand.

Q. Would you know the address to be in the hand of Sir Alexander ?

A. I would know it to be the hand-writing of Sir Alexander.

Q. Look at that paper signed " Mark Tod ?"

A. I conceive that also to be the hand-writing of Sir Alexander Boswell.

Q. Next look at the paper with the title "The late Lieutenant James Stuart?"

A. I think that also is Sir Alexander's hand.

Mr JEFFREY.—We have three or four witnesses yet as to the hand-writing.

ADAM DUFF, Esq. Sheriff-depute of the Shire of Edinburgh,
sworn.

Examined by Mr MURRAY.—Q. Do you recollect certain proceedings before you at the instance of Mr Alexander, with concurrence of the public prosecutor, to recover certain papers which he alleged had been taken from the Sentinel office?

A. Yes, I do.

Q. When did that take place?

A. About the end of March.

Q. Do you recollect Mr Spalding being examined before you as the agent for Mr Borthwick, and ordered by you to produce certain papers which he said had been taken from the Sentinel office?

A. Yes.

Q. You ordered him, and he produced them?

A. Yes.

Q. They were delivered under protest?

A. Yes.

Q. Is that your signature along with Mr Spalding's?

A. This is the docquet that Mr Spalding and I affixed upon the papers. (Witness read the docquet signed by him and by Mr Spalding.)

Q. Look at that paper. (Shown the paper entitled "The late Lieutenant James Stuart.") Is that one of the papers marked by you and Mr Spalding?

A. It is.

Q. Look at that. (Shown "Mark Tod.") Is that another of them?

A. Yes, this is one of the papers marked by us. The docquet is as follows. (Reads the docquet.)

Q. That is the docquet affixed by you and Mr Spalding at the time?

A. Not exactly at the time. The papers lay under my custody two or three days till the docquets were put on and signed.

Q. Were you examined as a haver to produce these papers?

A. Yes, on Thursday last.

Q. Were they then produced by you?

A. I could not produce them, because, some day betwixt the 5th and 10th April, a petition was presented to me in

name of the Lord Advocate, to have the papers forwarded to the Crown Agent, to be produced on the trial of William Murray Borthwick at Glasgow.

Q And you had delivered them?

A. I ordered them to be delivered to the Crown Agent, who signed a receipt for them on the back of the Lord Advocate's petition.

Mr MONCREIFF to the Lord Advocate.—We trust your Lordship is now satisfied that we have proved these documents?

The LORD ADVOCATE.—By no means.

Mr MONCREIFF.—Then we shall call Mr Spalding.

Mr JEFFREY to the witness Mr Duff.—Q. Do you remember of the parties Stevenson and Stuart being bound over to keep the peace?

A. Yes, I do.

Q. The subject was on account of a publication in the Beacon newspaper?

A. Yes.

Q. Do your recollect of Mr Stuart calling on you subsequently, stating that he continued to be assailed by publications in that paper, and that he then put it to you that these publications should be inquired into by you and put a stop to, or interdicted?

A. I recollect of his calling on me for that purpose.

Q. And you declined to interfere?

A. I did not think that that was the proper course to be adopted, because it might appear to be an undue interference on my part with the liberty of the press.

Mr JEFFREY to the Court.—The letter signed "Mark Tod" will be found in No. 17. of the Sentinel newspaper at p. 133. The clerk will read it at the conclusion of the evidence for the pannel; and in the same way he will read the article, "The late Lieutenant James Stuart," which will be found in No. 20. of the Sentinel, p. 126. We say that the manuscripts of these publications are holograph of Sir Alexander Boswell.

WILLIAM SPALDING recalled,

And examined by Mr MONCREIFF.—You told us, when you were lately before us, that you brought away from Glasgow some of the manuscripts of the Sentinel newspaper, and carried them to Edinburgh, after which you were obliged to produce them before the Sheriff?

A. I did.

Q. Now, look at that paper, (shown the paper signed

" Mark Tod,") and look at the docquet at the end of it. Is that one of them?

A. It is.

Q. Look at that one also, (shown " The late Lieutenant James Stuart.") Is that one of them?

A. It is.

Q. These were in your possession?

A. They were.

Q. Did you produce them to Mr Stuart?

A. Once, I did. At least the one signed " Mark Tod" was so produced by me to Mr Stuart.

Q. Had he seen them before, when you were examining them?

A. He had.

MR MONCREIFF to the Court.—We now refer to the first number of the Sentinel. After that, we refer to the process of damages at the instance of Mr Stuart against Borthwick and Alexander, the printers and publishers of the Sentinel newspaper; and particularly to the last article of the answers for the defenders in that action to Mr Stuart's condescendence.

JUSTICE-CLERK.—Was that answer put in, and does it form part of the process, after it came judicially before the Jury Court; or was it lodged in the process while it remained in the Court of Session?

MR COCKBURN.—It was only lodged the other day, after the process was transmitted to the Jury Court. No Judge of the Jury Court ever saw it. We desire to have read by the clerk the 7th, 14th, and 15th articles of that answer.

(The articles were then read by the clerk, as in the Appendix.)

GEORGE BRUCE, Messenger at Arms, Sworn by LORD SUCCOTH.

Examined by Mr JEFFREY.—Are you a messenger at arms?

A. Yes.

Q. Were you employed, in execution of a warrant, to bring Sir Alexander Boswell and Mr Stuart to the Sheriff on the night of the 23d March last?

A. I was.

Q. At what o'clock was it?

A. About eleven o'clock I went to Sir Alexander's house, and on inquiring for him, I was told he was in bed; and the servant said he was unwilling to disturb him. I told him the person wished to see him, who was to call on him in the even-

ing. The servant then went up stairs, and in a little Sir Alexander came down. He was told he was my prisoner.

Q. How did he take it?

A. He was very unwilling to come along with me at first, but at length said he would accompany me in a few minutes. He said to me, What if I should return and say he was not at home? I told him I could not do it; and that he must come with me.

Q. He went at last?

A. He wished to go up stairs for a few minutes.

Q. Did he go?

A. Yes.

Q. Did he stay long?

A. Nearly ten minutes. I sent in a message to say I could not stop longer.

Q. Did he make any remark or observation of what he understood this arrest to be about?

A. On the way to the Sheriff, he said, some of his friends must have given this information;—that they had done it for good, but it was the worst thing they could have done for him, as it would oblige him to go and live on the Continent, if, — and he stopped, and said nothing more.

LORD KINEDDER, one of the Lords of Council and Session, sworn. Examined by Mr JEFFREY.

Q. May I ask your Lordship if you are acquainted with Mr Stuart?

A. Perfectly well.

Q. Have you been long acquainted with him?

A. I cannot exactly say; I should think three or four and twenty years. Certainly above twenty.

Q. Pretty intimately acquainted?

A. Extremely so.

Q. You have known him both publicly and privately?

A. Yes.

Q. So that you have met him in the country, as well as in town?

A. Yes.

Q. May I ask, what opinion you have formed of Mr Stuart, in point of respectability, general character, and gentlemanly conduct?

A. During those twenty years, I have been very much connected with Mr Stuart professionally, and likewise privately; and certainly, in all my lifetime, I never knew a more perfectly good-tempered, kind-hearted, amiable man, nor a safer companion.

Q. You are aware that Mr Stuart takes a considerable share in politics. I think he has not the good fortune to have agreed with you on political subjects?

A. On subjects of that kind, we differed very decidedly indeed.

Q. I introduced the observation, in order to ask whether you considered him as liable to be tainted with personal hostility against those who differed with him in political sentiments?

A. Certainly not; very much the reverse.

Q. You never found him make difference of political opinion any bar to your cordiality in private life?

A. No. I never, in any communication I have had with Mr Stuart, had the smallest difference with him in private life.

Q. Perhaps you may recollect an occurrence that happened in Fife some years ago, when, by some accident or cause, his name was omitted in the commission of the peace?

A. I have heard of what occurred at that time.

Q. You will perhaps recollect the tenor of the resolutions adopted at a meeting held, in consequence, on that occasion, to get his name replaced?

A. No farther than that it was for the purpose of having Mr Stuart's name restored.

Q. Was a resolution passed expressive of the opinion the meeting held of his character?

A. Yes.

Q. Was it unanimously and cordially adopted by the meeting?

A. Yes. It was at Lord Moray's. It was in a small committee at Lord Moray's, at which I was present.

Dr ROBERTSON BARCLAY of Keavil, Fifeshire, Sworn.

Examined by Mr JEFFREY.

Q. Are you acquainted with Mr Stuart, the pannel?

A. Very well.

Q. Have you known him for many years?

A. Above twenty years.

Q. You reside in his neighbourhood in the country?

A. Within eight or ten miles of him.

Q. In the same district in Fife?

A. Yes.

Q. Have you had frequent occasions to meet him in public and private?

A. Yes.

Q. What is your opinion, and, so far as known to you, the general opinion, of his character for respectability and ho-

nour, but chiefly in respect of temper—I mean as to his being peaceable or quarrelsome ?

A. His character is as respectable as that of any gentleman in the county ; and as for temper, I have never known a man better tempered.

Q. Do you remember the occasion of Mr Stuart's name being omitted in the new commission for the peace of the county, and of a meeting being called in order to have it replaced ?

A. Yes.

Q. Did you attend that meeting ?

A. I did.

Q. Were the resolutions generally adopted ?

A. They were. It was unanimously resolved to apply to the Lord-Lieutenant of the county to restore his name to the commission.

Q. Resolutions were proposed on that occasion ?

A. Certainly.

Q. Was there a considerable attendance on that occasion ?

A. It was a meeting more numerous than usual.

Mr JEFFREY.—I beg your attention to what I am going to read.

(The Resolutions were then read by Mr Jeffrey. *)

Mr JEFFREY.—There is a gentleman who sits at the bar, Mr Erskine of Cardross, to whose testimony being taken as to Mr Stuart's character, I fancy there will be no objection, although he has been present during this trial. (No objection stated.)

DAVID ERSKINE, Esq. of Cardross, Sworn.

Examined by Mr JEFFREY.

Q. Are you intimately acquainted with Mr Stuart, who is sitting by you ?

A. I have been so from his infancy up to this moment.

Q. Were you connected together in your education ?

A. We are very nearly connected by blood. At an early age we were very much together, and so we have continued to be in after life.

Q. You have continued intimate since ?

A. Intimate till the present time.

Q. What is your opinion, upon oath, as to his character for honour and respectability, and more particularly as to disposition and temper—whether is he disposed to seek or avoid quarrels ?

* See Appendix, No. III.

A. As to disposition, he is particularly mild and gentle. I have ever been of opinion he has more of the milk of human kindness in him than any person I ever met with. I never heard him make an ill-natured remark of any person, in the course of my life, on any occasion whatever.

WILLIAM GULLAND, Esq. Stripeside, Sworn.

Examined by Mr JEFFREY.

Q. You reside in the western district of Fife ?

A. Yes.

Q. Are you well acquainted with Mr Stuart ?

A. Yes.

Q. Have you known him for a long period of time ?

A. Yes.

Q. And met him both in public and on private occasions ?

A. Yes.

Q. Have you commonly gone along with or against him in political votings ?

A. Always against him.

Q. I think you acted as an agent for General Wemyss in the canvass for the county in the year 1806 ?

A. I did what I could for my friend.

Q. Mr Stuart was engaged for Mr Ferguson of Raith in the same occupation ?

A. Yes.

Q. In the county meetings do you not usually meet with Mr Stuart ?

A. I do.

Q. At district meetings ?

A. Yes.

Q. From what you know of this gentleman, in the way of friendship and opposition, will you give us your opinion as to his character generally, and particularly as to his disposition and temper ?

A. His character is good, and his temper also good, as far as I know him.

Q. You know he held a lieutenancy in one of the Yeomanry Cavalry troops ?

A. Yes. He got his commission to command the troop in 1819. I served with him about twenty years in that troop.

Q. Was he very zealous and attentive in the duty of that troop ?

A. Very zealous and very attentive.

Q. Did he appear to make any distinction at the mess, or any where, on account of political differences of opinion ?

A. Never ; he rather discouraged any tendency to dispute on politics.

FRANCIS WALKER, Esq. of East Fortune, Sworn.

Examined by Mr CUNINGHAME.

Q. How long have you known the prisoner ?

A. Thirty years and better ; intimately for twenty.

Q. You and he have been decidedly opposed to one another in political sentiments ?

A. We were always good friends, and generally of the same views, except as to politics.

Q. Did he appear to you a person who allowed political differences of opinion to interfere with his private sentiments of friendship and regard in private life ?

A. I never differed with him in private life.

Q. And were you in the habit of meeting with one another both in town and country ?

A. Frequently.

Q. What is your opinion of his demeanour in private life, particularly as to disposition and temper ?

A. He is a remarkably good tempered man,—not a man likely to give or take offence rashly upon any occasion.

Q. Did you always consider him as a safe companion ?

A. I did.

Q. More given to make up than widen breaches ?

A. Certainly.

WALTER COOK, Esq. W. S. Sworn.

Examined by Mr JEFFREY.

Q. Have you been long acquainted with Mr Stuart ?

A. Yes, I have, twenty-three or twenty-four years at the least.

Q. Have you been in an intimate state with him most of that time ?

A. Yes, I was in a society with him at a very early age—and I have been always on a very pleasant footing with Mr Stuart.

Q. I think Mr Stuart and you have not quite agreed in politics ?

A. Not altogether.

Q. Did that ever make any difference between you ?

A. Never in the least, Sir.

Q. Did you know any man in whom political difference makes less in private friendship?

A. I can only state, as to Mr Stuart, I am not aware it ever made any on his mind. I have often differed with Mr Stuart in opinion, but no difference of political opinion ever created any impression on my mind against Mr Stuart, or any difference in friendship betwixt us.

Q. You were rival competitors for an honourable office a few years ago,—that canvass was conducted with good humour?

A. I very often had occasion to say, no canvass could be more fairly and honourably conducted. Mr Stuart was the successful candidate. Every part of Mr Stuart's conduct was as honourable and as fair as it was possible to be. The general opinion was, that the canvass would run very nearly betwixt us. Our respective friends were very active for a period of more than two months. This made no change on Mr Stuart; on the contrary, it rather increased our friendship.

Mr JEFFREY.—What you have stated is most honourable to both. Upon that may I ask you, Whether you have ever seen in Mr Stuart a disposition to quarrel with others?

A. I have never seen any instance to make me think Mr Stuart was at all given to quarrel.

RICHARD MACKENZIE, Esq. of Dolphington, Sworn.

Examined by Mr COCKBURN.

Q. Have you known Mr Stuart long?

A. Rather more than thirty years.

Q. Intimately?

A. Intimately.

Q. In all sorts of business?

A. Yes.

Q. In the intercourse of private and public life?

A. Yes.

Q. What is your opinion of his character in reference to peaceableness of disposition?

A. He is a very amiable and remarkably good tempered and agreeable man.

Q. Have you ever known him addicted to quarrel?

A. No.

Q. Or ever indulge in any vindictive feelings?

A. No.

Q. I believe you have not the fortune to agree in politics,—has that tended at all to embitter your intercourse with one another?

A. I have been for twenty years a member of a club along with him, supping together frequently, and I do not think I ever saw him a moment out of temper during the whole time.

HAY DONALDSON, W. S. Sworn.

Examined by Mr MONCREIFF.

Q. You have been well acquainted with Mr Stuart ?

A. Yes.

Q. How long ?

A. Nearly thirty years.

Q. How did you first become acquainted ?

A. I think we became acquainted at College about 1793 or 1794.

Q. You have had a good deal of intercourse together ?

A. Very much indeed.

Q. I think you were at one time in partnership ?

A. From 1804 to 1816, about eleven years and a half.

Q. In the course of that time you have seen a good deal of him ?

A. Very much.

Q. How did you find him in point of temper and disposition ?

A. I always considered him as eminently distinguished for command of temper, kindness of disposition, humanity, and every correct and honourable principle.

Q. Were you accustomed to hear him speak harshly of people ?

A. I do not remember a single instance of his applying a harsh epithet to any man whatever, either in a public or private capacity.

Q. I need not ask you, then, if you consider him a safe companion ?

A. Of all men I ever met with in the intercourse of society, I should the least hesitate to apply that character to Mr Stuart.

Q. I believe you do not agree in politics ?

A. Upon that subject we entirely differed in opinion.

Q. Have you been accustomed to converse with him on political topics ?

A. Freely and unreservedly.

Q. Without fear of this leading to any disagreement or difference between you ?

A. Never; I have often conversed with him, and heard him converse, on political subjects; but neither in his conversations with myself, nor in that more general society in which I was accustomed to meet him, did I ever observe him indicate any keenness or intemperance on political subjects.

Q. The partnership between you is dissolved?

A. It was dissolved about six years ago.

Q. How was that done? did you part in good humour?

A. It was done very much upon my own suggestion; and, I believe, Mr Stuart did me the honour to express his concern and regret that we should separate. But neither in the discussions preparatory to that event, nor in the arrangements consequent on it, did he ever, on any occasion, act to me otherwise than in perfect good temper.

Q. And you have continued friends ever since?

A. We have, down to the present time.

Mr JEFFREY.—It is quite unnecessary to go on with this. With the reading of the papers proved, we will close our case.

Mr COCKBURN.—I wish to read to the Jury the offensive passages in the articles of the Sentinel, that have been proved to be in the hand-writing of Sir Alexander Boswell. I shall first read three or four lines of the Song. I shall read from the printed copy. I read the two passages pointed at by Lord Rosslyn. The words are—

There's stot-feeder Stuart,
Kent for that fat-cow—art,
How glegly he kicks ony ba', man;
And Gibson, lang chiel, man,
Whase height might serve weel, man,
To read his ain name on a wa', man.
And they crack and we tak, &c.

Your knights o' the pen, man,
Are a' *gentlemen*, man,
Ilk *body's* a *limb* o' the law, man;
Tacks, bonds, precognitions,
Bills, wills, and petitions,
And *ought* but a *trigger* some draw, man.
And they crack and we tak, &c.

Mr Cockburn then read passages from each of the articles, "Mark Tod" and "The late Lieutenant James Stuart."*

* These articles are printed in the *Appendix*.

Mr COCKBURN.—There is one other passage which I wish to read from the *first* number of the Sentinel.

Mr M'NEILL.—This article is not alleged to be in the hand-writing of Sir Alexander Boswell, and it is the subject of the action in the Jury Court, now in dependence.

The passage was then read by Mr Cockburn. (See Appendix, No. V.)

Mr JEFFREY.—After what has been done, I trust I shall be considered as sufficiently discharging my duty in the eyes of the public and of my client, in now saying, that I here close the evidence in his behalf.

LORD ADVOCATE.—*Gentlemen of the Jury*,—After the length of time which you have been called upon to give your attention to this interesting and important case, it will be satisfactory to you and to the Court, that the course which I am now about to pursue, sanctioned, as I trust you will admit it is, by the convictions on my own mind, and supported as it is by the opinion of my learned friend the Solicitor-General, and of the other gentlemen with whom I act, that that course is at least calculated to save you a considerable portion of time in listening to any statement of mine, and that it will probably save some portion of the time of my learned brother who is to address you on the part of the prisoner.

Gentlemen, before I precisely point out what that course is, I trust I shall be forgiven for stating, that, in whatever view this case is looked to by you, or by the country, sure I am that no doubt can arise on the propriety of the present prosecution. It has been, and I trust ever will continue to be, the invariable course when the life of any individual, however low in society, has been taken from him by violence, that the circumstances connected with that crime should form the subject of a criminal investigation before the Criminal Court of this country, and that the person against whom the accusation lies shall have a verdict upon his case

either establishing his guilt, or acquitting of all crime ; and if this be a salutary practice in the general case, sure I am you will concur with me that this is a case in which such investigation is eminently required, where an individual has suffered, it certainly must be admitted, by illegal violence, where that individual was in the prime of life, the father of a numerous family, a zealous and active magistrate, a Vice-Lieutenant of a considerable county, a person gifted with talents and qualities alike useful to society, and to endear him to the circle of his private acquaintance. When such a person falls by violence, assuredly it is expedient for the justice of the country that the case should be investigated with minuteness. This, indeed, is right, independent of what is due to the justice of the country,—in justice to that unfortunate family, which has suffered a loss never to be repaired ;—right to the unfortunate gentleman at the bar, in order that the whole circumstances of the case may appear before the world, and that the whole guilt he has committed may be known ; that its precise extent may be ascertained, or his innocence may be established,—that he may either suffer for the crime he has committed, or receive a verdict of acquittal at your hands for his innocence.

The libel now before you charges the gentleman at the bar with having committed the most heinous offence known to our law, that of deliberate murder, in having, on the day specified, gone out on purpose to fight a duel with Sir Alexander Boswell, at whom he intentionally discharged the contents of a loaded pistol, by which he was killed. My honourable friend who opened this case complained, that the indictment aggravates the case, by stating, that the prisoner fled from justice. Now, for myself, I do regret that the expression in question was used in the indictment. It is, however, right for me to state, that it is the invariable practice to introduce that statement in all cases where an individual has not conformed to the common practice of giving himself up, and being examined judicially. That this gentleman did flee from justice is a fact which this day has been completely proved. I do not, however, mean to say that he absconded in the common sense of the term,—that he did not mean to stand his trial. I trust, when you look at the circumstances, though attempts have been made to have it supposed otherwise, it will distinctly appear, that on this occasion there has been every disposition on the part of the public prosecutor to do the gentleman at the bar full justice in bringing him to trial, as soon as he could rightly be brought

to trial ; that when the true and real circumstances of the case are known, no ground for imputation on the public prosecutor will be found to exist. It has been stated as the reason given by the Crown counsel at the time why they thought this indictment should not instantly be tried, that the gentleman at the bar ought first to surrender and have undergone a judicial examination. And most certainly, if the common and uniform practice observed in similar cases had been attended to here, this person would not have been brought to trial till he had returned to the country ; nay, even advantage might have been taken this day of his attendance to desert this diet, for the purpose of having him examined before being brought to trial.

But that is not the course which has been pursued. I cannot think of detaining you with relating the circumstances that led to any little delay that has taken place. But they are such as to make me feel in my own mind justified for that delay, and to satisfy me, that the gentleman at the bar has been brought to trial as early as he possibly could, consistently with what is due to the justice of the country. I early expressed my anxiety that he should be brought to trial, and sure I am he suffered no hardship, or any thing of which he can complain, in the meantime.

You heard something said of an application made to foreign courts regarding him, as if means for apprehending him abroad had been taken. But there is no ground for that insinuation. No means whatever were adopted to pursue this course ; nor has any thing more been done than allowing him the privilege of which he has this day availed himself, of sisting himself at your bar, without one moment's imprisonment. I will not dilate farther on this circumstance ; for I am confident, that my learned friends opposite, knowing the case in all its bearings, and knowing the whole circumstances, will not think that there has been any thing done on this side of the bar for which the Crown counsel have any reason to be ashamed. I know 't is my own feeling, that I have endeavoured to act in as liberal and fair a manner as has been consistent with my public duty.

Gentlemen, with respect to the charge of murder, it is impossible for me not to state, in the broadest and most decided terms, that that charge, according to every view of the law, has this day been proved most distinctly. It has been proved to you by the testimony of the Noble Earl who was first examined, and of Mr Douglas, who followed him, that a duel did take place on the day libelled between Sir Alex-

ander Boswell and the prisoner at the bar ; that the friends of these individuals having had interviews and communications together, Mr Stuart came to the resolution that, unless satisfaction of a certain kind was offered, Sir Alexander Boswell should be called out ; that this was followed by certain other proceedings, which were detailed fully in the evidence ; and that the matter ended in a meeting, deliberately concerted at Auchtertool, where the unfortunate prisoner now at the bar discharged a loaded pistol at Sir Alexander Boswell, of which it is proved that he died. I will not go into the details of the evidence on these points. These are facts which cannot and will not be denied.

Gentlemen, if this be so, I say, that my duty calls on me to ask you whether any defence of a valid kind has been set up. The defence which was made approaches to the nature of justification, founded upon self-defence ; at least this is the technical term in our law under which that defence, if valid to any extent, must be classed ; for we know of no other actual justification of an individual committing murder, but the proof that he did so in his own defence. Now, I will not read any law books to you on the subject, but state, without fear of contradiction from my learned friend who is to follow me, that such a plea cannot legally and strictly avail the panel, under the circumstances which have been proved ; and that a person going out deliberately to fight a duel, and killing his antagonist, cannot be allowed to state himself as in those circumstances of self-defence, which entitle him to a verdict of acquittal.

I must own, however, that juries have, and by possibility you may think yourselves entitled not to regard the law in that strict point of view ; or at least that you may consider yourselves at liberty to go into the detail of circumstances which led to this unfortunate duel ; and, holding yourselves not so much a court of law as a court of honour, determine whether, under all the circumstances, the individual at the bar is to be held as guilty or not. Now, I say that such considerations belong more fitly to a higher tribunal ; and your strict duty does not entitle you to go into this investigation. But if you shall think yourselves entitled to go into this discussion, then I do state to you, that I think I discharge my duty in the manner most becoming and fitting, when I say, that I have thought it my duty not merely to bring this prosecution, but to lay it before you, in all its circumstances, as fully as it was in my power. I have

heard with much satisfaction the statement which was made in defence, and all the evidence which has been brought forward in support of it. These are now before you, and you will judge of them without my entering into the circumstances with which they are connected ; for I do think it would be a waste of your time, and not fitting in the situation in which I stand, to do this.

I leave the case with you, under the directions which you will receive from the Bench, to aid you in forming your opinion of the evidence produced ; and whatever you shall deem it fitting to do on this solemn occasion, the Public Prosecutor will be satisfied ; and I am sure your verdict will be satisfactory to the country and to your own consciences. That being my conviction, I consider it my most fit and proper course to leave the case entirely in your own hands.

Mr JEFFREY.—*Gentlemen of the Jury*,—Though I must confess that the anxiety with which I entered this Court to-day has been very greatly diminished during the progress of the discussions which have now closed, and that it has not been at all increased by the very moderate and reasonable statement, which was such as I confess I expected, and am aware was due, from the Learned Prosecutor, I cannot consent, for the sake of my client, to follow his example, by committing this case at once, and altogether without observation, to your decision: Nor can I entirely discharge from my own mind those feelings of anxiety which the very brief, but pregnant allusion contained in the address you have just heard to the known and solemn authorities of the law, has certainly contributed in some degree to revive.

Before proceeding, however, to trouble you with any observations of my own, I may be allowed to relieve and gratify myself by stating, that there was *one* of those which fell from the Learned Prosecutor, in which I can, with the most perfect cordiality, concur ;—and that is, that whatever may be, or whatever he thinks ought to be, the issue of this trial, his having brought the case publicly and fully before you and the country is, and ever must be, a source of congratulation to the accused. He desires, certainly, justification at your hands, and he expects it. But, above all, he desires that full disclosure of the truth, for which, if it answered no other end, this public trial by jury ought to be for ever immortal.

Gentlemen, after the character that has been given of the prisoner at the bar, and the evidence that has been laid before you this day, all perfectly harmonious and consistent throughout, as to his general conduct and demeanour, I think I may

say, there are no *specialties* in this case that can justify any alarm on the part of his friends; and that the only point to which those who are entrusted with his defence need now address themselves, is that judicial sanction under which he has been said to lie, and out of the danger of which I think it will not be difficult to induce you to deliver him.

The indictment sets forth, and observe, Gentlemen, your verdict must find that it truly or erroneously sets forth, that the prisoner at the bar *having conceived malice against the late Sir Alexander Boswell*, did, in the furtherance, and for the gratification of that malice, seek out pretexts or occasions to challenge him to fight a duel, and that, on the day mentioned in the indictment, he did *wickedly and maliciously* discharge at him a loaded pistol, for the purpose and with the desire of taking his life, by which pistol his life was undoubtedly sacrificed.

This is the charge.

To this charge he has pleaded Not Guilty; and, at the same time, he, in the beginning of the trial, all but admitted, and now by my means admits, that it is proved that he was the unhappy instrument of the death of that unfortunate individual. His plea of Not Guilty, therefore, which he now repeats, and trusts in with greatly more confidence before the facts were disclosed, of course turns and hinges on this allegation, that though, unluckily, his hand was the instrument of Sir Alexander Boswell's death, he did not kill him *wickedly and maliciously*; that his mind was pure from every spark of malignity, vindictiveness, or rancour; that he acted in this matter from motives totally unconnected with personal animosity; and that he ought now to be considered, not as having committed a great crime, but as having fallen under a great calamity.

I apprehend I need not tell you, what is familiar to all of us who live in the atmosphere of this place, that the essence of all crimes, their criminal quality, consists in the motive and intention from which they proceed, and that there is no act, not even that of bereaving a fellow-creature intentionally of life, that has in it any criminal character arising from its merely physical description, of being injurious or painful to another. The guilt, and the whole guilt, of any act, so far as it can be described by its external characters, consists in the criminal and culpable motives and intentions from which it proceeds.

It is only, therefore, rational and accountable creatures, who are presumed to be guided in all their important acts by reflection and choice, that can be called upon to answer for their conduct; and they answer, not for the acts themselves, but for

the innocence of the motives or objects which they had in view in performing them.

Now, Gentlemen, after all you have heard, while these propositions neither are nor can be disputed, if it were enough to support the plea in which we insist, that you are satisfied that the unfortunate gentleman at the bar stands in the predicament I have described—that you are all of you convinced that he went to the place of fatal rencounter without one atom of malice, hatred, or vengeance in his heart, and that he was actuated throughout, by motives not only not savouring of such feelings, but in their true character most directly opposed to them,—if this were all I had to do, I should then indeed be inclined to follow the example that has been set me, and to leave you to the unassisted consideration of the evidence, which has all had but one character, and all but one tendency

But, before I can refer to this evidence, it seems I must satisfy you that I have a right to desire you to consider it. Before I enter on my defence, I must persuade you that that defence is admissible.

We have been told, and certainly without any reference to authorities—which, however, I do not pretend do not exist—in general and comprehensive terms, that duelling, in any case, is an irrational, and barbarous, and pernicious practice; and that he who, for any cause, is unfortunate enough to take the life of another in a duel, is necessarily guilty of the aggravated charge of Murder.

I am not here to pass encomiums, or to enter an apology for the practice of duelling; and yet I may be permitted to remind you, that on the occasions, almost the only ones, when we are called to consider the defences and views of parties who have engaged in such a practice, we are not generally in a situation to consider it very fairly. It is only when a lamentable accident has occurred, when precious and regretted blood has been shed, and when all our better feelings of sympathy and instinctive disapprobation of the actual violence that has occasioned the calamity are roused, that we are called upon to consider the nature of this extraordinary institution or practice of modern times. The actual evils of duelling are foremost and uppermost in our thoughts; but the evils which it tends to *prevent* entirely escape our consideration. It ought, therefore, in fairness to be remembered, that however awkward, however imperfect, however unequal and immoral a remedy it may appear, yet that, in point of historical fact, it has come as a corrective to greater immoralities, and a preventive of greater crimes. It is well known to all who

are versed in history that, in point of fact, the practice of honourable duelling superseded the guilt and atrocity of private assassination ; and that to this practice, pregnant as it often is with calamity and suffering in every form, we are not only indebted for the polish and refinement that belong to the members of our upper society, but for what is a great deal more valuable,—not only the high and general esteem in which courage and intrepidity are held,—but also the universal diffusion of fairness, manliness, forbearance, and handsome conduct among all the Gentlemen of the land. The practice may indeed lead to the same results in one point of view, I mean in relation to bodily suffering, to which the unlimited licence which it has prevented and superseded sometimes led ; but the dispositions of mind which it creates, for the most part, and according to all modern experience, are totally the reverse. Even those who are most prone thus to expose their own lives and those of others, are but rarely chargeable with any cruelty, ferocity, or quarrelsome disposition ; and the truth undoubtedly is, that the practice itself has encouraged the growth of humanity, forbearance, generosity of sentiment, and the greatest caution and mildness of demeanour.

That it affords a remedy for these crimes, and operates as a preventive to these atrocities, the history of those nations, where it prevails most and least, presents an obvious and conclusive testimony. In Spain, Portugal, and Italy, assassinations are daily occurring, poisonings, stabbings, the basest and most cruel murders. In those other countries again, where duelling is an occasional but rare occurrence, and where it is called in only as an appropriate remedy for those affronts, vexations, and griefs, for which the law gives no redress, such atrocities are unheard of. In submitting it as matter of consideration for you as a general topic, whether a severe punishment of the survivor in duels, and the suppression of the practice, would not lead to worse consequences, I trust, that in this country it would not lead to assassinations ; but it certainly would lead to private and secret meetings held without witnesses, and without the means afforded to the parties of guarding against unfairness, or, what is as distressing and painful, the suspicion of it where it did not exist.

But I am not disposed to enlarge on this topic, or to urge it upon you as a necessary ground of my defence. All I say, or wish you to remember, is *a fact* which I believe no person will be bold enough to contradict ; and that is, that however irrational,—however immoral,—how-

ever objectionable, in many points of view, the practice of duelling may be in itself, it is a practice so established, and the necessity of which is so enforced by sanctions which no man can be expected to resist or defy, as to render, in certain circumstances, such an encounter inevitable to any gentleman. The unfortunate individual, who, in obedience to that sanction, exposes his own life, and the life of another, is not answerable, I submit to you, for the justness or reasonableness of the institution itself. I have brought with me, however, to-day a number of books, in which authors of the severest and strictest morality, and of the deepest sense of religion, have given the high sanction of their authority to the lawfulness of such an act, some of them tracing it from its origin to its consequences, and others in a more general strain, justifying it on argument and reason, and with authority far greater than the suggestions I have thrown out at all indicate.

I shall not trouble you now with going into many, or hardly any of these statements. At the same time, that I may not appear to be speaking entirely from my own authority, I shall take the liberty of submitting a very few lines, to show how the practice has been viewed by authors of the highest names, and of the severest principles in our kingdom.

I refer you, first, to a work universally known, and which will carry down the name of the father of Sir Alexander Boswell to the latest period in the annals of English literature; I mean his memoirs of his illustrious friend, Dr Johnson, a man certainly of the sternest morality, and most profound sense of religion, and who joined to both those high and severe attributes, perhaps the most vigorous understanding that was ever brought to the consideration of any moral question. It happens that Mr Boswell himself concurred in the opinions which he reports as those of his illustrious friend;—and from what we have heard to-day, it appears that his son inherited these opinions. I shall not trouble you with many words, but shall quote one passage where this topic is started, and Boswell records Dr Johnson's opinion:—"I started the question, whether duelling was consistent with moral duty? The brave old general (General Oglethorpe) fired at this, and said, with a lofty air, 'Undoubtedly, a man has a right to defend his honour.' (*Goldsmith, turning to me,*) 'I ask you, Sir, what would you do if you were affronted?' I answered, 'I should think it necessary to fight.' 'Why then, (replied Goldsmith,) that solves the question.' *Johnson.* 'No, Sir, it does not solve

the question. It does not follow, that what a man would do, is therefore right." *

The sage begins, you see, with disputing the opinion of the defender of duelling; and, therefore, if he had begun this controversy with that love of contradiction which often influenced him, he probably would have gone on to show that he was wrong; but, continues Boswell, "I said I wished to have it settled, whether duelling was contrary to the laws of Christianity. Johnson immediately entered on the subject, and treated it in a masterly manner; and so far as I have been able to recollect, his thoughts were these:—Sir, As men become in a high degree refined, various causes of offence arise, which are considered to be of such importance, that life must be staked to atone for them, though in reality they are not so. A body that has received a very fine polish may be easily hurt. Before men arrive at this artificial refinement, if one tells his neighbour he lies, his neighbour tells him he lies; if one gives his neighbour a blow, his neighbour gives him a blow; but in a state of highly polished society, an affront is held to be a serious injury. It must therefore be resented, or rather a duel must be fought upon it, as men have agreed to banish from their society one who puts up with an affront without fighting a duel. Now, Sir, it is never unlawful to fight in self-defence. He, then, who fights a duel, does not fight from passion against his antagonist, but out of self-defence, to avert the stigma of the world, and to prevent himself from being driven from society. I could wish there was not that superfluity of refinement; *but while such notions prevail, no doubt a man may lawfully fight a duel.*

"Let it be remembered, that this justification is applicable only to a person who receives an affront. All mankind must condemn the aggressor."

The topic was afterwards resumed, and then he says, p. 232, "He (Dr Johnson) this day again defended duelling; and put his argument upon what I have ever thought the most solid basis, that if public war be allowed to be consistent with morality, private war must be equally so. Indeed, we may observe what strained arguments are used to reconcile war with the Christian religion; but, in my opinion, it is exceeding clear, that duelling having better reasons for its barbarous violence, is more justifiable than war, in which thousands go forth without any cause of personal quarrel, and massacre each other."

* *Boswell's Life of Johnson*, 5th Edit. 1807, Vol. II. p. 182.

On another occasion, on which both he and his auditor must have been prepossessed against the practice, the same doctrine is uniformly and consistently maintained. Boswell says, (Id. Vol. IV. p. 223,) " Having next day gone to Mr Burke's seat in the country, from whence I was recalled by an express, that a near relation of mine had killed his antagonist in a duel, and was himself dangerously wounded, I saw little of Dr Johnson till Monday, (April 28,) when I spent a considerable part of the day with him, and introduced the subject, which then chiefly occupied my mind. *Johnson*. ' I do not see, Sir, that fighting is forbidden in Scripture ; I see revenge forbidden, but not self-defence.' *Boswell*. ' The Quakers say it is, Unto him that smiteth thee on one cheek, offer him also the other.' *Johnson*. ' But stay, Sir, the text is meant only to have the effect of moderating passion ; it is plain that we are not to take it in a literal sense. We see this from the context, where there are other recommendations, which I warrant you the Quaker will not take literally, as, for instance, From him that would borrow of thee, turn thou not away. Let a man whose credit is bad come to a Quaker, and say, ' Well, Sir, lend me a hundred pounds,' he'll find him as unwilling as any other man. No, Sir, a man *may shed the blood of a man who invades his character*, as he may shoot him who attempts to break into his house."

There is another author of equal eminence, and equal purity of moral doctrine, to whom also I think it right transiently to refer ; and I do it the rather, because this learned person not only held, for a very long course of years, the situation of Professor of Morals in this University, but was himself of the clerical profession originally, and not only, therefore, by his habits and virtues, but by the training of his early life, must have had fully in view those sanctions of high principle, which religion has superadded to ordinary moral obligation. I need hardly say, that I mean the late Dr Adam Ferguson, whose writings are well known, and who, in the principles of morality, which he gave to the world as a summary of those views by which he trained the youth of this land to generous and gentle lives, has treated this subject with the freedom and caution with which it ought to be treated, and has come to the same result with his brother moralist in the adjoining country. (*Ferguson's Lectures on Moral and Political Science*, Vol. II. p. 280, *et seq.*) He says what undoubtedly is true, " That a woman who is forcibly attacked in her chastity, or a man who is put to the trial of personal estimation, or honour, may receive an injury, which

the utmost power of the magistrate *cannot afterwards repair*. An *exception* is accordingly admitted in favour of the private right of defence on such occasions.

“ Among these modes of attack, there is a singular species of injury, owing its effect to the caprice of manners in modern times ; but of which the effect is extremely severe and injurious, not susceptible of any legal measurement, nor reparable by all the power of the magistrate.

“ In consequence of this singular caprice, altogether unknown to the celebrated nations of antiquity, not only aspersions of character, but any single term of reproach, or gesture of insult, so far impairs the estimation or credit of the person who suffers them, that if the breach be not repaired in the way which caprice also directs, he becomes an outcast from the society, in which his condition depends on the esteem in which he is held. Applications to the courts of justice, for reparation, *would only increase the dishonour*. False aspersions may be removed by the clearest evidence of truth ; but this would not remove the dishonour of having suffered them to be made. An accusation may be known to be true or false ; its effect, however, in this case, does not depend upon the degree in which it is believed, but upon the degree of tameness with which it is received. Even calumny hurts, not by the imputation of any criminal charge, but rather by the imputation of cowardice, implied in the manner of receiving it ; and the defence which caprice has provided for this mode of attack, is a display of courage, not a refutation of any false accusation. The accusation may be true,—but the courageous vindicates his honour. The accusation may be false,—but the coward is overwhelmed with disgrace. Even the injured is denied the use of stratagem or surprise in his own defence. He *must* meet his antagonist, however injurious, upon equal terms ; and, if he would preserve his honour, must pass through the hazard of a single combat for that purpose. His character for integrity may be blasted or entire, but his estimation, in point of honour, is independent of either condition.

“ In this example, the deviation from reason is monstrous, —but the dignity of justice is made to stoop to the caprice of fashion ; and so long as the private injury is suffered to have its effect, the petulance or folly of one person may drive another from his place in society ; so long as the magistrate cannot preserve the citizen in his state, *so long the injured citizen must be allowed to defend himself, and to adopt the only means which are effectual for that purpose*.

“To reform this abuse has been justly considered as an object of great importance in the policy of modern nations. But attempts to this purpose have begun, perhaps, *at the wrong end*, by denunciations of severity against those who, finding their honour invaded, take the ordinary way of preventing or repairing the wrong with which they are attacked. If men are, by vulgar caprice, made accessible to an injury of the most serious nature—to an injury which a magistrate cannot repair, it is *by no means just* to restrain them from the only means of defence that is left in their power. This being evident to the general sense of mankind, the only effect of severities denounced by the law, in most countries, against the injured, as well as the aggressor, has been to oblige courts of justice to fall upon measures to evade the rigour of that very law they are required to apply.”

It is hardly necessary for me to pursue this quotation farther.

I have read you the opinion of a Philosopher and a Clergyman. I will now read you the opinion of a Philosopher, a Lawyer, and a *Judge*, one most eminent too in all these characters, and who, for a long period, occupied the seat of justice in this country, and in the very Court in which we now are assembled, and will continue to adorn and improve its jurisprudence as long as the Courts or Law of Scotland shall remain established;—I mean Lord Kames, who, in one of his most discursive and elaborate works, has given, by far, the most decided opinion of any to which I have yet alluded. I quote from the *Sketches of the History of Man*, (*Kames' Sketches*, Vol. I. p. 335.) “Is duelling a crime by the law of nature? A distinction is necessary.—If two men, bent to destroy each of them the other, meet armed, and one or both be slain, the act is highly criminal: It is murder in the strictest sense of the word.—If they appoint time and place to execute their murderous purpose, such agreement will not be more innocent than an agreement among a band of robbers to attack every passenger; they will be abhorred as unfit for civil society. But a duel, which an affront forces a man upon, for vindicating his honour, when no satisfaction is offered, or no proper satisfaction, *is very different*. *I cannot see that the person affronted is guilty of any crime*; and if the person who gave the affront have offered what he thinks full satisfaction, *I see no crime on either side*. The parties have agreed to decide their quarrel in the honourable way, and no other person is hurt. If it be urged that duelling is a crime against

the state, which is interested in the lives of its subjects, I answer, that individuals are entitled to be protected by the state ; but that if two men craving that protection, agree to end the dispute by single combat, the state has no concern. There is nothing inconsistent with the laws of society, that men, in an affair of honour, should reserve the privilege of a duel ; and, for that reason, the privilege may justly be understood as reserved by every man when he enters into society. I admit that the using the privilege on every slight occasion cannot be too much discouraged ; but such discouragement, if duelling be not criminal, belongs to a court of police, not to a court of law.—What then shall be said of our statutes?—Observe, he speaks of our *statute law alone* ; and considers that there is no crime, unless by means of it.—“ What then shall be said of our statutes which punish with death and confiscation of moveables, those who fight a single combat without the King’s licence ; and which punish even the giving or accepting a challenge with banishment, and confiscation of moveables ? When a man thinks his honour at stake, fear of death will not deter him from seeking redress ; nor is an alternative left him, as the bearing a gross affront is highly dishonourable in the opinion of all the world. Have we not instances without number, of men adhering to the supposed orthodoxy of their religious tenets, unawed by flames and gibbets ? How absurd, then, is it in our legislature to punish a man for doing what is indispensable, if he wish to avoid contempt ? Laws that contradict honest principles, or even honest prejudices, never are effectual : *nature revolts against them*. And it is believed, that these statutes have never been effectual in any one instance, unless, perhaps to furnish an excuse for declining a single combat.”

With these authorities, and with the inward authority of the sense and obvious reason which they convey, I think I may be allowed to say, that I was startled at the very broad proposition on which the learned prosecutor rests his claim for a verdict of Guilty, and of Murder too, on the present occasion. He does all but admit indeed, that if there be *any* case in which killing in a duel is not murder, and not even criminal, it is the case now before you ; and his proposition amounts, therefore, to this, that, in point of fact, a man who, in any given or imaginable situation, shall have the misfortune to kill his antagonist in a duel, shall be adjudged guilty of the crime of murder. I must hold him as stating this of the most favourable case that can be suggested, for I will not do the present case the injustice of supposing that any

can be imagined stronger—or so strong. But take any case—suppose an officer of high rank, at the head of his regiment, beaten, kicked, spit on, reviled, and trampled on, by a man of his own condition, and of greater bodily strength,—all demands of apology or satisfactory explanation rejected with contumely,—reduced, therefore, to the alternative of choosing between being expelled from his profession, hooted and pointed at in society, or giving a meeting to his enemy, but if he does give a meeting, deploring the necessity;—while discharging from his mind all bitter and malignant feeling, but bound to preserve his life, and that which renders life precious,—he calls this person to the field, and there has the misfortune to kill him—that man, we are told, is to be suspended on a gibbet as a murderer! Why were such a doctrine precisely enacted by the Legislature,—did those statutes still subsist on which alone the Learned Judge, whom I have quoted, fastens the reproach of teaching such a doctrine,—even then, I would call upon you to disregard them,—I would say to you with truth, that they had been abrogated by a contrary usage, and by that change of times and manners, which we know, in this country, can effectually wipe away all penal enactments, whether formally repealed or not.

I do not wish, nor do I think it necessary in this case, to go into details or arguments of a debateable description; but I cannot help, in passing, venturing to say to you, in broad and general terms, that I conceive the criminal law of this happy country to consist, not in the barbarous and implacable severity of its antiquated statutes, not in the severe and impracticable doctrines that may still retain their places in books of law, even of the greatest authority; not even, I say it with great submission, in the *dicta* that may fall from the lips of those high and stern magistrates, the Judges of the land, who are bound to assert all the severity of the code which they are appointed to uphold, and in their places to countenance or sanction no relaxation of it, however hard and inoperative in the correction of crimes it may be. But, I say, the criminal law of this happy country consists in the authorized and approved *practice* of its courts of criminal law,—as this is ultimately embodied in the popular, admired, and consistent verdicts of juries. I am far from saying that juries have any dispensing power over the law. I am far from saying, though that has been said, that they have a rightful power to disappoint the law, where its sanctions have been plainly incurred. But, I say, that where the verdicts of juries have met, for a course of time, with the general approbation of the community,

and the sanction of the Courts under whose authority they are pronounced,—when they go on in an uniform series, and all point one way, they then make and constitute that real and practical law, on which all the subjects of the land are entitled to rely, and on the administration of which the people, with the greatest security, may depend. And, in truth, it is a proud and fortunate circumstance for this country, that such an institution as a jury should exist, with power occasionally to temper the severity of that law, which a court of another description would too inflexibly enforce, and thus silently to abrogate statutes, or maxims of common law, which the course of the times, the progress of manners, the disappearance of some crimes, and the rise of others, may have rendered inapplicable and unnecessary; that such indications of the temper of the people, that such manifestations of the feelings and views of those who are selected from among the people to represent it, and decide on the fate of their brethren, should be allowed, by means of a refusal to enforce them, to guide the Legislature to the repeal of particular laws, or to the enactment of new ones with mitigated penalties.

And, Gentlemen, I perceive that, in a neighbouring country, where the criminal law is almost entirely statutory, and the authority and construction of it, therefore, greatly more precise than with us, with whom the whole code is more of the nature of common law, this power of juries is not only recognized as existing, and winked at by Judges, but is subscribed to by them, and applauded not only by the country at large, among whom these juries have never been known to have lost their credit, but even by the Judges themselves, from whose *dicta* they occasionally dissent.

Why, Gentlemen, there is one familiar instance of this, which has lately and frequently been brought under the view of the Courts, and of Parliament,—I mean the difficulty, or rather the impossibility, of finding juries to execute laws which have become too severe for the age. I mean particularly that common topic of complaint, the unreasonable severity of making stealing to a very small amount a capital offence, while a small occasional lowering of the value of the articles stolen would reduce the crime to what is called a clergyable or venial felony. In these cases, it has been often noticed and complained of, that juries, in the face of the most undoubted evidence, are constantly in the practice, when obliged to convict, of bringing in the article as not worth the tenth part of its real value. The late Sir Samuel Ro-

milly, in his well known discourse on the criminal law, gives a vast variety of such cases, where things were proved to have been sold by the thief for ten, twelve, and sixteen guineas, and a Jury has found them to be worth only 39s. There is one instance, too, where in a theft of a ten pound note, the Jury found the prisoner guilty of stealing to the amount of 39s. only; and one Jury is mentioned, before whom two men who were found guilty conjunctly of the same theft, were yet convicted variously, one being found guilty of stealing to the amount of 39s. and the other of 50s. which astonished the Judge, till, on inquiry, he found that the man found guilty of stealing to the amount of 50s. had formerly been before a number of that jury at a Quarter-sessions for other offences, and was, therefore, thought deserving the higher penalty of the law, while the other was for the first time before them, and was, therefore, convicted for the lower.

But these practices, irregular as they are, have received an extraordinary sanction, in the way they are spoken of, by the great and most popular writer on the law of England—I mean Blackstone. He says, “It is true, that the mercy of juries will often make them strain a point, and bring in larceny to be under the value of twelvepence, when it is really of much greater value; but this, though evidently justifiable and proper, when it only reduces the present nominal value of money to the ancient standard, is otherwise a kind of *pious perjury*, and does not at all excuse our common law in this respect from the imputation of severity, but rather strongly confesses the charge.” (*Blackstone’s Com.* Vol. IV. p. 239.)

Now, this is the language of a Judge and a master of the law, of one of its greatest oracles and brightest ornaments; and he tells you, that this practice is a pious perjury! recognizing it as quite familiar, done daily with the acquiescence of courts, and neither entailing reproach on juries among their neighbours, nor exposing them to the censure of their legal superiors.

He calls it a pious perjury! as we say a pious fraud, meaning something commendable on the whole, though not in all its bearings, conformable to strict precept.

I might quote instances of this kind in our own practice. We had once a statute, Gentlemen, now abrogated, by which juries were tied down, in distinct terms, to convict a person of murder, whether they thought her guilty or not, provided certain presumptions of guilt, which the Legislature had chosen, when found together, to take as absolute

proof, should be found to concur. I mean the statute of William and Mary regarding child-murder, declaring that if it should be proved, that a woman had not revealed her pregnancy, or called in help at the birth, and the child was afterwards missing, these circumstances concurring, should, in all cases, be taken as proof of child-murder.

Many convictions were got under this statute. But as a number of cases arose, where, from false modesty, accident, or otherwise, all these supposed infallible criteria concurred, without the guilt of murder having existed, Juries came to boggle at such an enactment; and, accordingly, it was abrogated by their uniform refusal to execute it. All our late writers distinctly say, that of late years, no convictions could be obtained under that statute. Nay, I remember myself, in the early part of my practice, of two cases where the statute was libelled on, in one of which the jury stated, that they would not convict on the statute, and found the prisoner not guilty, and the judge approved of their verdict. And in another case, I remember a Depute-Advocate was reprovved for bringing such a case to trial, and the judge told him plainly, that if he did proceed on that statute, he would take care there should be an acquittal.

Accordingly, that statute, by an act of laudable and praiseworthy contumacy on the part of juries, was abrogated in actual practice, before it was repealed by a recent act of the Legislature, which declared these circumstances to infer only a simple felony, punishable with imprisonment.

But though I refer to these cases to let you understand what I apprehend the law, and the practice of that law, actually to be, I am far from saying, that they afford a precedent which is, in every case, or lightly to be followed; for though a jury has been commended for finding a thing which is worth many pounds, of the value only of 39s., nay, for even finding, as in the case of the accession to the same crime, that it was, and that it was not of a certain value, I cannot but acknowledge, that the frequent assumption of this extraordinary and perilous power, by which, if exerted, except in extraordinary cases, the stability of the law would be gone, is by no means to be approved. But I do say, that even this is within the constitutional power of juries, when connived at, or openly recognised by high judicial authority; and I state this case of extraordinary power in order to show you that what I now contend for falls far within its limits. I do not require you to find that Sir Alexander Boswell did not fall by the hands of the prisoner at the bar, but

only that he did not fall by his malice.—I call upon you to give in a verdict of no untruth, directly or by implication. I call—and I think I cannot call in vain,—that you will not allow your verdict to be any thing but truth ; and I tell you, that you cannot be compelled to say that the prisoner *wickedly and maliciously* slew the unfortunate gentleman if you sincerely think he did not,—if you are satisfied that he slew him without malice, anger, or hatred, in the rencounter ;—in short, that the very reverse of all these feelings burned in his bosom towards the unfortunate gentleman at his death, before his death, and after his death.

The true point, then, is, Whether there is evidence that he killed him maliciously ? I need not read authorities to you upon this subject. Without multiplying these, I have marked a passage in Mr Hume's work, in which he describes that which forms the essence of all crimes, and to which alone the evidence in all prosecutions must go. He begins (chapter 1st) with the explanation of the nature ' of that *dole*, as it is called,—that corrupt and evil intention which is essential (so the light of nature teaches, and so all authorities have said) to the guilt of any crime. Now, in delivering this precept, those authorities are not to be understood in this sense, as if it were always necessary for the prosecutor to bring evidence of an intention to do the very thing that has been done, and to do it out of enmity to the individual who has been injured. In this more favourable sense to the prisoner, the maxim cannot be received into the law, for it would screen many great offenders from the punishment of their transgressions. And I think it is only true in this looser and more general, but a practical and a reasonable, sense, in which an English author of the first judgment in those matters (Judge Foster) has explained it ; that *the act must be attended with such circumstances as indicate a corrupt and malignant disposition ; a heart contemptuous of order, and regardless of social duty.*"

This, Gentlemen, is what you must find proved before you can find any one guilty of a crime. That which renders any action a crime is, that it proceeded from an illaudable, improper, criminal, malignant design.

Now, with great submission, I take this, in every case, to be *a part of the evidence*, and as such, competent and proper for the determination of a jury,—assisted, no doubt, by the opinions of the learned persons who preside in the Court, but only taking these as opinions to aid them in forming their own ; so that, on a view of all the evidence,

the jury is to say whether they are convinced that the prisoner is guilty or not guilty of that malignant purpose or contemptuous disregard of law and order, which forms the undoubted essence of every crime.

It is no doubt true, that, in our law books, it is laid down, that killing in a duel, however fairly that duel may have been conducted, is and ought to be considered as murder; and there are two reasons to explain how this, I must say too unqualified proposition, has been allowed to stand in our books of authority. In the first place, it is derived from a period of society, when our statutory law did make such a declaration; and one of the causes of its severity was, that the manners and customs of the times were such as to justify the enactment. For it is well known to every one, that there was a period when the abuse of duelling became a monstrous and flagrant evil, and when, out of mere wantonness, vanity, and folly, the lives of the most valuable citizens were sacrificed, in consequence of its prevalence, for causes equally fantastical and barbarous. I believe it is mentioned somewhere, that, in the short reign of Henry IV. of France, no fewer than 4000 gentlemen were slain in duels; and it is quite well known, that, during the sixteenth and seventeenth centuries, the same practice prevailed to an intolerable excess in these islands. That was the date of the law in question; and the history of the origin of these *dicta* of our lawyers is still preserved. How they have been preserved long after the lapse of the circumstances by which they at first were justified or required, is a question which probably will not require much explanation to those who know how tenacious lawyers and law-writers are of ancient maxims, and even of ancient prejudices;—how unwilling lawyers of every degree are, to acknowledge the imperfection of that law, which it is a part of their duty to uphold and magnify; how willing to say, that recourse to a Court of law supersedes and renders unnecessary any other appeal; and, therefore, on that rash and false assumption, to build the conclusion, that any other appeal, if attended with danger, or terminating in death, must be criminal and murderous. Nor should it be forgotten, that it may with some reason be maintained, that the most severe sanctions of the law should still be held out for the terror of offenders;—that all such killing should be taken, in the first place, for murder; that the act should be held as *prima facie* illegal, and should have the effect of putting him who commits it to a

proof of the circumstances which make his case an exception from the ordinary rule.

I have stated this rather as an apology for the law, than as a justification of it. For I will take leave to say, that it would be the greatest libel on the law, to hold that, in consequence, not of any statute declaring duelling a capital offence, for there is no longer any such statute, but, on the common law of the land, *all* killing in a duel shall be regarded as murder; in other words, that the crime of maliciously and treacherously killing another person shall be predicated of all those who kill in a duel, although there is no appearance of malice, or of any improper motive whatever. No opinions, no law, no rule of practice, no human authority, I say with confidence, can either compel or justify a jury in finding a man guilty of killing maliciously, who is proved not to have had any malice,—not to have had any bad motive, though his conduct has been sifted to the uttermost. It would be, of all preposterous notions, the most preposterous, and of all absurdities the most extreme, to say, that the law requires a jury to save themselves from perjury, by perjuring themselves to convict the innocent! You are bound, it is said, to find the prisoner guilty of maliciously killing. But I say that if you think he did *not* kill maliciously, you are plainly bound to acquit him; and that *you* would be guilty both of murder and perjury if you did otherwise.* It

* This argument might be put in a more technical, and perhaps a clearer, though less popular way, as follows. The essence of all crimes being the *dole*, or *malus animus*, from which they proceed, it is obvious that when we say that all killing in a duel is murder, we can mean only that the circumstances of deliberate appointment, and the intentional use of deadly weapons, are sufficient *indicia* from which to infer the existence of such *dole*, or malice. But the question, of what *inducia* shall be sufficient, in any case, to establish the existence of a criminal purpose, is plainly a *question of evidence*, and as such must, *ex necessitate*, be within the province of the jury. The Court may give it as their opinion, generally, that the concurrence of such *indicia* raises a presumption of malice,—but whether such malice is actually proved in any particular case, it must always be for the jury to determine: And to fix absolutely, and *ab ante*, that, upon proof of such *indicia*, the jury *must* necessarily find the malice proved, would just be doing, on this branch of the common law charge of murder, what the statute of William and Mary was held, very oppressively and unjustly to have done as to the charge of child-murder under that act. It is obvious, also, that to hold any such doctrine to be a fixed and binding part of the law, would be substantially to remove from the jury the cognisance, not only of the general guilt or innocence of the accused, but also of the most important part of the *evidence* by which that was to be determined. Consistently with that doctrine, indeed, a jury ought not in any such case to find the prisoner guilty, or not guilty; but should be limited to find merely that

is necessarily a matter of *evidence*, whether a prisoner has contracted the guilt of preconceived malice, and murder ensuing from it, or whether he has only incurred the involuntary and inevitable misfortune of taking away the life of another person, against whom he had no malice; and that, in order to render his own life tolerable, and to protect that state in society which he held, and his family, character, and name, —which a man must always be entitled to protect, where, by the fault of another, they have been endangered, at the hazard and at the expence of that party's life.

Nor is this new law. The Prosecutor, indeed, has told you, that life is so precious, that it is not to be lightly invaded, that no notion of violated honour, that no gratification or soothing of wounded vanity, can justify the taking it away; and he has gone so far as to tell you, that there is no ground on which deliberate killing can be justified, except

it was proved or not proved that he killed another in a duel;—for this is the only matter upon which, according to this system, they can possibly have any right to decide.

The doctrine of the prosecutor, indeed, leads obviously to the same undue limitation of the powers of the jury in cases of this kind, as was long maintained in cases of all kinds by the practice of pronouncing *special interlocutors of relevancy*. For if effect be given to the supposed maxim of law, that *all* killing in duels is necessarily murder, the result must obviously be the same as if, in every charge of murder in such circumstances, the Court had found specially, that the fact of the pannel having killed the defunct in a duel, *was, per se*, relevant to infer the guilt of murder, had repelled all the defences of the pannel that did not resolve into a denial of the killing in a duel, and remitted the libel, as found relevant, to the knowledge of an assize, with instructions to confine themselves in their verdict to the fact of such killing only. If such a deliverance would be contrary to the rights of the jury, and of the prisoner, which no one it is supposed will now dispute, it is difficult to see how the doctrine of the prosecutor can be saved from the same imputation. If the law be absolutely and clearly as he says it is, it is plain that the enforcement of it would lead infallibly to the same results with the interlocutor that we have imagined. The only difference between the exploded practice and the present would be, that the law, which certainly *ought* to be enforced, if it ought to be recognized as law at all, *was* enforced by such interlocutors, and may be evaded and disappointed by our modern forms of proceeding. It is humbly conceived, however, that the maxim relied on by the prosecutor is not a part of the law by which a jury can be bound, but the result merely of the traditionary opinions of judges on the weight due to certain *indicia* of malice or criminal purpose, the true value and effect of which it is the right and the duty of the jury to determine in every particular case. To hold otherwise, would be to hold that it was equivalent to a *standing special interlocutor of relevancy* in every case of killing in a duel,—and that, in every such case, the jury were bound to act under the implied limitation of such an interlocutor as we have above imagined.

that of self-defence, by which he means, in defence of our life, sacrificing the life of another.

Gentlemen, this is not the law. A man may deliberately and intentionally kill in defence of his own life undoubtedly; but he may also deliberately kill in defence of his property, where no personal violence is meditated—a woman may deliberately kill in defence of her chastity—a soldier may deliberately kill in defence of his post—a common sentry placed upon guard at the door of a field officer;—nay farther, a common citizen may deliberately kill in order to prevent a suspected criminal from making his escape, or to prevent a rescue. The cases, indeed, are numerous, in which our law recognizes the deliberate sacrifice for life—for the preservation of certain rights; but there are other cases, besides those of the character now mentioned, which seem to afford a direct legal warrant for putting life to hazard. This also may be done for the protection of the person from supposed or eventual danger; nay, even of property from probable invasion or destruction. Now, will any man say that there can be reason in that law which recognizes my right to shoot at a person who is carrying away an empty box, or even a purse full of gold—take it any way you please—and yet holds that he may not lawfully kill for the preservation, not of a pitiful portion of useless wealth, but for the preservation of all that renders wealth, society, and existence itself tolerable; and this too, where the person sacrificed can be shown to have been, in some degree, in the wrong?

If a person comes to the door of a post-chaise, presents his pistol, and asks your money, you may lawfully shoot him—you may lawfully shoot him, if you act upon a reasonable belief of danger. Even if his pistol should turn out not to be loaded, and so it appears that he never intended to shoot you, still your shooting is lawful. If you see a person packing up your property, or breaking into your house, and carrying it away, you may lawfully shoot him. Why?—just because you are entitled to say, I value more the security of my property, even when placed in unreal danger, than the life of the person who has put himself in opposition to my rights, such as they are. But, if a person has done that which has placed me in the dilemma of either shooting at him, or of living as an outcast from society—of being exposed to all manner of insults and contumelies—of being excluded from all honourable pursuits and professions—shrunk from by my ancient friends—the cause of blushing to

my relations, and sorrow to my children—the stain of an honourable name, and a hopeless outcast, and exile from society—without hope, means, or chance of restoration—if, I say, a man, by an act which is unlawful in itself, has placed me in that situation, can it be said, there being no malice in my heart, no means of defending my rights but this, no possibility of my subsisting otherwise on the earth without scorn, and all this by the unlawful act of another ;—I ask you, if, under these circumstances, I do not take my enemy off by assassination, but merely expose his life to the same risk as my own, and that, perhaps, with many chances against me, and he fall,—is it possible that the law, which deals so leniently with other slaughters, should call that a murder ? I submit to you, that this would be a proposition altogether monstrous. It is fortunately one which will now find neither patrons nor protection in any quarter.

I do not say that all duels, if fairly fought, must save the person slaying from the consequences of unlawful slaughter, or even of murder. On the contrary, I admit that, though duels fortunately are more rare than they were 100 years ago, and though I trust that a great proportion of them now proceed on justifiable grounds, it still is much to be feared, that, if an unlimited licence were given to them, and if the ordeal of a sifting trial did not await the survivor, there might be instances of abuses such as formerly existed, and were repressed by severe statutes. I would by no means place my cause on this footing. I freely admit, that there is a heavy presumption against that man by whom blood is shed. I admit, that I would come slowly to the conclusion, that blood has been shed with innocence ; and I ask no more than this, that I should be entitled to look to the causes of quarrel, and not be judged by dry maxims from books. I ask no more than that you would look to the practice of the times, to the recent proceedings of courts of law, and, in every case, inquire whether you find, from the nature of the act, as proved, any indications of that malignant spirit, and of those inexcusable passions, without which, I say, there can be no crime,—without which, where life is lost, there can undoubtedly be no murder.

Accordingly, Gentlemen, I find that the course of practice, ever since the real evil of duelling abated, has been exactly conformable to what I think you must feel already, not only justifies you, but lays you under the necessity, of inquiring what is the vindication in the present instance of the party accused. I have already mentioned that, in a short

reign in France, 4000 gentlemen are said to have fallen in duelling. It is a happy and a delightful contrast,—and vindicates and explains the change of our statutory law, and decisions, that is to be found in the more recent periods of our history,—when I tell you that, in the longest reign almost on record, that of the late Sovereign of these kingdoms, there were only between 60 and 70 persons reckoned to have fallen in Great Britain,—I believe I may say in Great Britain and Ireland, in duels. I speak from a book perhaps of no great authority, but which, I believe, is pretty correct in that general statement; and by which it appears that, in all that time, nearly 60 years, only about 170 duels were fought, *i. e.* 340 persons were engaged in such combats, and out of these, between 60 and 70 were slain.

Now, the first remark on this statement is, that there do not appear to have been more, in all, than between 18 and 20 trials on account of these affairs. In by far the greater number of cases, even though thus of a capital nature, the law did not think it necessary even to bring the survivor to trial, the event having been so plainly and notoriously justifiable and inevitable. Of these 18 or 20 trials, too, you will therefore understand, that they include all the bad and doubtful cases, and such as are to be considered the worst; though, perhaps, one or two bad cases may be supposed to have escaped. Now, the first remarkable thing is, that, in all these instances, there were just two, I think, or at most three capital convictions; and these are cases which strengthen the argument, and give one a notion of the sort of practices against which the ancient severity of the law against duelling was probably directed.

One, and by far the most palliated, was that in which a countryman of ours, Major Campbell, was unfortunate enough to receive and undergo the sentence of death for a duel fought in Ireland. This is the most mitigated case that occurs in the register of convictions; but I am sorry to say, and I will do it with all tenderness for the memory of that gentleman, that it was a strong and bad case. The parties had a quarrel, but separated afterwards for several hours; they were proved to be cool and composed in the interval, especially Major Campbell; they met again, and though they were quartered at the time in a garrison, where there were mutual friends, who could easily have been collected, they met in the night-time, *without seconds*, and in a private room. The only evidence, therefore, against the survivor was, and could only be, the general account of the antecedent quar-

rel, and the words of the unfortunate gentleman who was slaughtered, previous to his decease; and on this last the conviction depended. It was clearly made out that the unfortunate gentleman who died maintained that the duel was not fair, and said of his antagonist, that he was a bad man, and knew that he had hurried him.

Another of the cases where murder was found, was a case of plain assassination. I forget the names, but the parties met in the field, and when the one was going up to the other, apparently to salute him, or for some such purpose, he raised his pistol and blew his brains out. That man was tried, and most deservedly convicted, executed, and dissected, as a barbarian and ruffian, undeserving of the privileges or name of a gentleman.

Of the other cases which were selected for prosecution, some few have issued in a conviction of manslaughter, and these are all uniformly of the worst description. The first on record is that of a former Lord Byron, and approaches somewhat, in its circumstances, to that of Campbell. The parties quarrelled, went out from a company of their friends into a room, *without seconds*, and, by the light of a candle, fought with swords, and one of them was mortally wounded—the survivor, admitting that he drew his sword, and made a lunge at the other, before he got his sword entirely out of the scabbard; this, therefore, was a very narrow case; and on a trial before the Lord High Steward, a manslaughter was found, the prisoner being discharged on one day's confinement.

The greater part of the other cases are not reported, except in newspapers. But there is one case so reported, to which I beg leave to refer you, because, though it only occurs in the newspaper, it is one very famous, as being the first of those occasions in which judges admitted from the bench the necessity and expediency of juries tempering the law where, by necessity, judges have held themselves bound by it. I allude to that of Mr William Poe Purefoy, for killing Colonel Roper in a duel; and I may mention in a word the nature of the case, that you may see how infinitely more unfavourable it was than the present. Purefoy was a lieutenant in the regiment of which Colonel Roper was the colonel. The young gentleman had been guilty of some excess when engaged with his friends on a festive occasion, which called forth a pretty severe reprimand from the commanding officer. This was resented by the former in such unmeasured terms, that Colonel Roper was under the necessity of bring-

ing him before a court-martial, who found the charge proved, and sentenced him to be dismissed from the army, and rendered incapable of serving. That sentence being confirmed by the proper authority, was read at the head of the regiment, in Lieutenant Purefoy's presence, and carried into full effect. After this he came up to the colonel, and told him that he was a coward, a ruffian, and a scoundrel. The colonel answered, he had nothing to say to him, and turned on his heel. The same day he met him again, and said, "Do you now agree to meet me?"—at the same time shook his whip over his head, saying, "There is an earnest of what you may expect," and posted him. After some consultation, Colonel Roper was advised, as Purefoy had ceased to be in the army, and had the rank of a gentleman, it was necessary to send a message to him. They accordingly met, and Purefoy shot Roper dead on the field.

This case came to be tried in the year 1794, before Baron Hotham, at Maidstone; and that learned person, after summing up the case, (this is always done by the judges in England,) spoke as follows:

"It is now a painful duty, which jointly belongs to us; it is mine to lay down the law, and yours to apply it to the facts before you. The oath by which I am bound obliges me to say that homicide, after a due interval left for consideration, amounts to murder. The laws of England, in their utmost lenity and allowance for human frailty, extend their compassion only to sudden and momentary frays; and then, if the blood has not had time to cool, or the reason to return, the result is termed manslaughter. Such is the law of the land, which undoubtedly the unfortunate gentleman at the bar has violated, though he has acted in conformity to the laws of honour. His whole demeanour in the duel, according to the witness whom you are most to believe, Colonel Stanwix, was that of perfect honour and perfect humanity.

"Such is the law, and such are the facts. If you cannot reconcile the latter to your consciences, you must return a verdict of guilty. But if the contrary, *though the acquittal may trench on the rigid rules of law, yet the verdict will be lovely in the sight both of God and Man.*"

The jury instantly acquitted the prisoner.

Then came a remarkable case, one of the few that have been reported at some length, that of Captain Macnamara, for killing Colonel Montgomery, in which, I know not on what grounds, the Grand Jury had found a bill for manslaughter.

That is a pretty strong case, though I do not mean to impute any thing unfair to the gentleman who survived, and I hope still lives. It was a case of a foolish quarrel about a dog by which the unfortunate gentleman, who was killed, happened to be attended when riding in the Park. The dogs having quarrelled, Colonel Montgomery, who did not perceive that Captain Macnamara was near, came and separated them; and said, "Whose dog is this? I will knock him down;—" on which Captain Macnamara said, "Have you the arrogance to say you will knock my dog down? you must first knock me down." An altercation took place; Colonel Montgomery and his party rode up through Piccadilly, and Captain Macnamara following him, sent a friend immediately to Colonel Montgomery, met him the same day, and shot him dead on the spot.

I only wish to call your attention to the nature of the defence in this case, which, I believe, was prepared (indeed I know it was prepared) by the present Lord Erskine, who appeared as his counsel, but was not allowed to address the jury. The defence which he prepared was one which no British jury could resist. It states, "I am a captain of the British navy. My character you can only hear from others. But to maintain any character without situation, I must be respected. When called upon to lead others into honourable danger, I must not be supposed to be a man who sought safety, by submitting to what custom has taught others to consider as a disgrace. I am not presuming to urge any thing against the laws of God, or of this land. I know, that in the eye of religion and reason, obedience to the law, though against the feelings of the world, is the first duty, and ought to be the rule of action; but in putting a construction upon my motives, so as to ascertain the quality of my actions, you will make allowances for my situation. It is impossible to define, in terms, the proper feelings of a gentleman; but their existence have supported this happy country for many ages, and she might perish if they were lost." The jury instantly acquitted him.

Now, if this was a case of *justifiable* heat and violence, I do ask you what construction you would put on the present case?

But there are two other cases to which I would call your attention,—one, from a very remote dependency of this empire, but which is known to have given several valuable men to the law. The case was from India—Bengal, I think. It was the case of Sheppard,* which was tried before Sir Henry

* Sheppard, Asiatic Register, Dec. 1808. Vol. X. p. 115, 116.

Russel, the Recorder of that Settlement. I must begin by stating, that this case issued in a verdict of manslaughter ; though by the way, I would observe, that if there be any authority in law for a duel being a crime, it is either a murder or nothing at all. It is as much a departure from the authority of law to find it manslaughter, as to find it no crime at all. This, however, was an aggravated case. A quarrel took place between two officers in garrison, who chose to go out : after a good long delay,—several weeks spent in the exchange of notes and so forth,—in the dark, and to fight by the light of a lantern held by a black servant between them, without the inspection of a single European eye ;—no witnesses were present, the offence of the party who suffered was of a very vague description, only one witness saying that he thinks he had heard Captain Phillips speak lightly of Sheppard on some occasion or other. On this provocation the challenge is given, the parties fight alone, (for the black servant was not evidence) in the dark, and Captain Phillips is killed almost on the spot. I quote the judicial opinion on this occasion, rather to show the boldness with which the judge spoke out, (what all judges in their hearts must feel, and encourage juries to do,) than on account of its applicability to the present case. Sir Henry says, after stating that the crime of killing in a duel is murder: “ At the same time, in compassion to human infirmity, courts of law and juries have been in the habit of making great allowances for the circumstances in which persons called upon to fight a duel may have been placed. When a fellow-creature is put to death from motives of deliberate malice, the law pronounces the crime to be murder. When the same act is committed with the immediate influence of violent passion, it is merely accounted manslaughter. Now, in the case before you, it will be for you to consider whether the present circumstances of society, as applied to a gentleman and a soldier, do not take away the particular character of malice from the crime. A man is placed in a situation, where, if he does not go out to fight a duel, he has no prospect before him in life, but that of contempt and ignominy. Surely, the feelings which are inseparable from such a situation, may be supposed to deprive a man of self-possession and self-command, as well as a violent gust of passion. And I see no reason why the law should deny, nor do I believe that the law does deny, the same indulgence to those feelings, that it yields to a brutal impulse, which it is the chief object of all human and divine institutions to control. In declaring this opinion, I believe I go farther than most judges have done.

But I have not formed it without mature deliberation, and I think it places the question of law, in cases of duel, upon more stable and more tenable grounds, than the shifts and artifices which have been so generally resorted to." And he then alludes to the other circumstances which deprived the case of a malicious character. "Where it clearly appears in evidence, that two persons armed with weapons have gone out together, have fought, and that one of them has fallen, nothing more surely can be wanting to make out the facts of the case, and it is in vain to struggle against them, or to seek to prevent them."

The only other English case I shall trouble you with, is one which I also refer to,—not for the sake of that for which I might quote all the cases, the part taken by the jury—but for the judicial opinions, which you see I am collecting and going over, in order to show you that the Court not merely connived at but encouraged the lenity of juries, and, contrary to the law of England, allowed circumstances to be left to the jury, which had formerly been held matters of law, and among others, the inquiry whether the killing was malicious or not.

The case to which I refer attracted much attention at the time. It was the case of Alcock, which was tried before Baron Smith, in Ireland, in the year 1808, and I quote it, in order that the very strong judicial opinion given on that occasion may be before you, for, in other respects, it appears a case to be contrasted rather than compared with the present. It was a case of a duel between two candidates for an Irish county, where, as you may suppose, a pretty warm canvass was going on. Tenants of a certain rank have votes in Ireland. But, holding their lands by very precarious tenures, they vote in general with their landlord. One of these gentlemen had got the interest of a certain landlady, (for a lady was the proprietor,) and he therefore reckoned upon the tenants. The other candidate, however, was more popular, and the tenants were rash enough to tender him their votes. The offence of the unfortunate gentleman who fell was, that he allowed them to vote for him. The names of the parties were Colclough and Alcock. Alcock was the survivor—Colclough fell—Colclough had these votes tendered to him. Alcock, on finding this, came and remonstrated, in very warm terms, on the impropriety and indecorum of such a proceeding. Colclough protested in the most solemn terms that he had not solicited these votes. Alcock insisted that they should not vote for him. How can I prevent them? said Colclough. After some words, however, Alcock said he must have satis-

faction; a meeting was arranged, and they fought—certainly before a plentiful audience, for I believe most of the voters attended, so that there might be four or five hundred spectators. Mr Alcock put on spectacles before firing, which, it was proved, he did not at all times wear. This was remonstrated against by the second of the other party, who said that he could not see his father at that distance, (by the way, it would be no great misfortune not to see one's father in such a situation.) They then fought, and Alcock was shot dead the first shot. This case, which created a great and perhaps very reasonable sensation, came to be tried at the Wexford Assizes. The charge of the learned judge, after the evidence had been concluded, states as follows:

After observing that, in the earlier part of the circuit, there had been many capital trials which had excited no interest or attention, his Lordship proceeds:

“ How different is the case of the charge which we are now trying? Yet strip it of the trappings and aggravations, with which I know not whether party zeal, or a more justifiable motive, has sought to clothe it;—and what does it amount to? To a transgression with which we must, on the one hand, confess ourselves to be almost as familiar, as we must, on the other hand, admit it to be highly culpable and illegal. Two persons, disclaiming and violating the municipal law, prefer paying obedience to a false and mistaken code of honour; and one of these disclaimers falls in a premeditated duel, forbidden by the law of the land; but which the erroneous system of punctilio, to which I have adverted, enjoins in some instances, and permits in many more. No sooner has this melancholy catastrophe taken place, than the friends of the deceased commence a vigorous prosecution against the causer of his death. But some of these prosecutors we may presume, we even know, to have themselves been present, aiding and assisting, at the perpetration of what they now represent to have been murder;—and, in strictness of law, their representation is a just one. Some of those prosecutors we may conceive to have at one time been desirous that *their champion should inflict the death which he has suffered*; should do the very act for which they now prefer a capital indictment. If, abjuring the code of honour, and adhering to the rules of that which we are here assembled to administer, the prisoners or the deceased had *declined to send a message*, or been tardy in accepting one, we may doubt whether these strenuous assertors of the law would not have scorned to associate with such strict observers of it; and rewarded

their pacific conduct with indelible disgrace. Thus, on the object of their blame a hard alternative might be thrown—of being *posted as a coward*, or indicted for a *murder*.”

Then, after some remarks on the details of the case, he closes his address as follows :

“ However much and justly such combats are to be blamed, you may more abhor the sanguinary notions which produce them ; and pity the victims of a law of opinion, which you strongly wish to be repealed. You may have sons, you must have friends and relatives yourselves ; and will be disposed to ask this question of your consciences and hearts, Whether the pride and infirmity of human nature might not lead you to wish that these would rather violate the law, than endure the scorn and contumely of (Heaven knows !) an unsparing world ; or incur the slightest stain or blemish on their honour. You will wish to give the prisoner the benefit of these reflections ; but whether you would be warranted to do so, *is what I scarcely dare inquire*,—otherwise than by suggesting cases which I conceive to be similar in their legal nature for the purpose of illustrating and explaining your duties here. :

“ If an officer, at the head of his regiment, be called a coward and a scoundrel, instead of cutting the offender down, challenge and kill him in a duel, he is a murderer by law ; and if you are *bound* to find the prisoner Alcock guilty, you will be equally *obliged* to return a verdict of conviction against a gallant officer, under the circumstances which I have described. Yet, on the other hand, the military punishment and intolerable disgrace, which must inevitably follow from his submitting to the affront, it cannot be necessary for me to dwell upon. If an aged, an infirm, a beloved and respected parent, be insulted and reviled, or even struck and beaten in the presence of a son, and this latter happen to kill the assailant in a duel, the transaction will be murder ; and if you *cannot* acquit the prisoner, you *could not* acquit the child. If a husband find his wife in the embraces of another, and kill him unarmed and unresisting, this is manslaughter of the lowest and most venal kind. But if, giving the adulterer further time for preparation, and a fairer chance for his life, he puts arms in his hands, and meets and kills him in a duel, the offence, altering its character, becomes at once murder ; and if you are bound to convict the prisoner here, you would be also bound to a conviction in the case which I have supposed. Not because in morals the criminality is equal ; but because both offences are murder in the eye of law. But let me ask of

your consciences and your hearts as men, could you convict the officer, the husband, or the son ?

“ *I will not repeat, lest I might seem to inculcate, the austere doctrine of the law. In once stating it, I conceive that I have sufficiently discharged my painful duty. Nay, even sitting where I do, I think myself warranted in doubting, whether this doctrine is not a sort of anomaly in our code; existing in theory, almost abrogated in practice, by the acuteness of the judges, the humanity of jurors, the mercy of the Crown. This, Gentlemen, was all I had to say. The evidence is before you. If you believe it, you have heard its legal results from the bench. You have the law of the land, bearing witness against the prisoner, on the one hand; the law of opinion, on the other, endeavouring to excuse them; the one prescribing rigour; the other suggesting mercy. It is for you to pronounce which call you will obey.* The trammels of my office forbid my adding more. But there is another, a far better voice than mine, to which, though I be silent, you may listen still. I mean that still small voice of which you read in Scripture, and which addresses itself to the consciences of good and pious men in the soft and soothing accents of clemency and peace. Its dictates may be followed with a confidence the most implicit. It is the voice of Him who cannot err; who cannot lead his creatures into error; who, to justice without blemish, can unite mercy without bounds; who, all criminal as we are, can acquit us, and yet be just. To the influence of those secret and divine monitors, and (as far as human infirmity can follow) of this divine example, I surrender you; and commit the care of the prisoner at the bar. I wait with some anxiety, and much impatience, for your verdict. Judge then whether I am impatient for a capital conviction.”

The jury in one moment acquitted him.

This is all I have to say to you on the precedents from the sister countries, where, you will recollect, charges of this kind are stronger, because the crime stands upon statute in England. The Scotch cases are very few. *There is no instance for 150 years* of any conviction for fighting a duel in Scotland—*none*, that is, since the time when those causes existed which rendered it necessary to pass the severe laws I formerly mentioned. The only three cases I am aware of are of a recent date. They are the cases of Lieutenant Rae in 1797 or 1798, Macdonell of Glengarry in 1798, and Dr Cahill in 1811; all these were cases of acquittal; and all of them undoubtedly were cases far less favourable to the prisoner than the present.

Of the first case, no authentic record is preserved, but the

list of the jury is known, and I may be permitted to mention, that it consisted of men as honourable as yourselves, containing the names of many of the leading gentry of this place. Twelve of the jury were gentlemen of estate, and the remaining three were respectable citizens. That jury acquitted the prisoner, though it appeared that the sufferer had not been much to blame, and the survivor more.

The next case made more noise, and has been more correctly, at least more fully, reported. I am unwilling, as the respectable gentleman tried on that occasion still survives, to enter into the particulars of that case, farther than by saying, that it was admitted and proved, beyond the possibility of contradiction, that the unfortunate gentleman who fell had not been at all in the wrong, while the other was decidedly and egregiously to blame in the origin of the quarrel. Some little dissension occurred at a ball and supper in the North between Glengarry and Lieutenant M'Leod, and it was the opinion of all the witnesses that the latter gave no cause of offence. Glengarry, imagining, however, that he had, and, being of a passionate temper, indulged in the most unpardonable excesses. This young gentleman, wearing the uniform of an officer, and in the public ball-room, was accosted in the most violent terms by Glengarry, on account of some fancied insult, such as that he imagined M'Leod gave him an impertinent look. For this cause Glengarry struck this unfortunate young man with his cane, kicked him with his foot, and drove him in disgrace out of the room. A challenge ensued, and the parties met. Here, undoubtedly, by the advice of his respectable second, and with the help of his restored reason, Glengarry did confess the frightful excesses into which he had been hurried, and offered any apology—any atonement which was not inconsistent with the character of a gentleman. A condition was insisted upon, to which it was certainly hard, and perhaps impossible, for any gentleman to submit; the young man was advised to accept of no verbal atonement, unless Glengarry should put the whip with which the disgrace had been inflicted into his hand, and leave it to him to retort or not, as he might see cause. After much discussion, the terms were rejected—Glengarry went out—he did not fire wide of his mark or in the air, as Sir Alexander Boswell appears here to have intended, but fired into the bosom of the unfortunate young man, and his life fell a sacrifice in a short time after. A most respectable jury sat upon the trial. I shall read their names to you:

James Hamilton, Esq. of Bangour,
 Sir Andrew Lauder Dick of Fountainhall,
 Charles Brown of Coalston,
 John Cadell of Cockenzie,
 Francis Buchan Sydserrf of Ruchlaw,
 William Wilkie, younger of Gilkerston,
 James Johnston of Straiton,
 James Watson of Woodbank,
 Thomas Sharp of Houston,
 William Hamilton of Westport,
 Alexander Marjoribanks of Marjoribanks,
 Mathew Sandilands of Couston,
 Henry Guthrie, Writer in Edinburgh,
 James Home, Writer to the Signet,
 John Gloag, Merchant in Edinburgh.

That jury tried the case ; and after a long and elaborate defence, the facts coming out as I have stated them, they returned a verdict, all in one voice finding the prisoner *not guilty*. They accompanied this verdict with an explanation of the grounds of it, which has very properly been preserved, and is as follows :

“ The Chancellor of the Jury stated, That he was desired by them to explain to the Court, that the sole ground on which the verdict proceeded, was the anxious desire latterly manifested by the pannel and his friend Major Macdonell, amicably to settle the matter, and prevent proceeding to extremities, by making an apology, as the jury highly disapproved of the pannel’s conduct at the beginning of the unhappy dispute ; and it was fortunate for him that the duel did not take place so soon as intended, before any attempt was made to apologize, as, in that case, it was highly probable that they would have returned a very different verdict. At the same time, it was proper to observe, that the jury had no idea of finding, by their verdict, that what is called fairly killing a man in a duel, could afford, by itself, any defence against a charge of murder.” And of this verdict, with this explanation, the Court distinctly approved.

I forbear dwelling on this case. But I must say, that if you should find the prisoner at the bar guilty of any thing at all, and should not give him the full benefit of that verdict of not guilty which Glengarry had from your respectable predecessors, you will thereby, whatever degree of censure your verdict may truly be meant to imply, hold him out to the world as more guilty than the gentleman now mentioned. I cannot

imagine, however, that the cases will stand a moment's comparison ; or that you will be either asked, or yourselves disposed, to pronounce a verdict touching him by the sentence of culpable homicide, or thus give the public any reason for believing that, as Glengarry, in these circumstances, was unanimously found not guilty, Mr Stuart's case must be more unfavourable when you find him guilty in any degree.

The last case which I have mentioned occurred in 1811, and arose out of an unfortunate quarrel between two young men, one the military surgeon, and the other a captain in the same regiment. There, too, though the character of the survivor, as well as that of his victim, appeared to be highly honourable, the cause of quarrel originated with him. He gave the first offence, and to the last refused to make any apology. Some trifling dispute arose at the mess, on account of Cahill having, contrary to the regulations of the mess, carried the file of a newspaper to his own room when sick. He laughed at the matter, and when informed of it by a friend of Captain Rutherford, (for that was the name of his antagonist,) he said that the thing must have arisen from personal pique ; and upon being pressed to say whom he meant, he said, I don't mean to say any thing covertly,—I believe Rutherford has a personal pique at me. Rutherford naturally took this amiss, and no satisfactory explanation being offered, the parties, the same evening, went out, with two very young men as their seconds, to a quarry in the neighbourhood, or some such miserable place. At that time, many opportunities were given the young man there, but he would not apologize. They fired, and Rutherford was shot. Cahill was brought to trial, and I hold in my hand the notes taken, both by my learned friend Mr Murray, and by Mr Mackenzie, of the statement made on that occasion by the Learned Judge who presided, the Lord Justice-Clerk, now Lord President. "His Lordship said," in addressing the Jury, "that he would detain them but with a very few words. This was a case of a very distressing and afflicting nature. It was particularly distressing to those engaged in its determination ; for it was impossible to disguise the truth, that the manners of the times, and the feelings of the people, were here in direct opposition to the law of the land.—As to the facts connected with the present case, all parties were agreed. It had been proved, and was admitted, that the deceased Captain Rutherford had been killed by a shot fired at him by the prisoner. His Lordship considered it his bounden duty to tell the jury that there could be no doubt as to

the law of Scotland, which declared that where one man killed another in a deliberate duel, this was as much to be regarded as a homicide, as if the deceased had met his death in any other criminal way. There being no doubt as to the law, there would, in any other case, be as little as to the verdict. But it was impossible not to see that these were circumstances which left a doubt. These circumstances were before the jury, *and it was for them to judge whether the law was applicable to this case*, and whether they would strictly carry it into effect. There was one circumstance, however, which his Lordship said he would mention, that might perhaps tend to relieve their minds of difficulty, if they felt any. When the prisoner surrendered himself in order to stand his trial, he was imprisoned on a charge of murder. After his incarceration, a petition was presented to his Lordship to liberate him on bail, but he refused this, as he had never known an instance of a person accused of the crime of murder being liberated in that manner. A few days after this, another petition was given in *with consent of the Public Prosecutor*, on which the prisoner was liberated. In giving this consent, it was obvious, that the Public Prosecutor did not consider the charge against the prisoner as amounting to murder. The jury would perhaps consider it rather hard in him to come forward now, and ask the infliction of a punishment, which corresponded with the crime of murder."

A verdict was pronounced, finding the pannel, with two dissentient voices, not guilty; upon which the presiding judge said, "Gentlemen, you have given a verdict *such as was to be expected* on the occasion." You have in this speech as direct an encouragement to a verdict of not guilty as could well be imagined; and after the verdict is returned, you have the judge declaring that it was exactly what he expected. Is it possible then to hold that our Courts now think that *all* killing in a duel is necessarily murder?

And now, Gentlemen, having detained you so long on the law and the precedents by which it is illustrated, I do not intend to go into the circumstances of the case. Look at the facts. I will not say the provocation given to Mr Stuart, that would be a poor expression. I say look at the circumstances of unmerited and atrocious abuse of which this gentleman was made the victim, and of which, when he found that the author was his equal in rank, it was impossible for him to remain a patient victim, without incurring actual and merited disgrace, and giving credibility to those imputations which, till then, no one could believe

against him. I shall follow the example of the Public Prosecutor in abstaining from detail. But look at his conduct throughout—Look at his forbearance, and the measures he took before he knew the party with whom he had to do—his application to the Sheriff for protection after he was bound over to keep the peace—his regular application to a court of law for the only redress that could be afforded against a printer, the real calumniators being in disguise. Lastly, look at his course of proceeding after he had a prospect of discovering the original papers, every part of which is now proved to have been marked by the most scrupulous propriety. Look at his conduct, so correct and proper, so moderate, temperate, and firm, in all that he did in getting these papers. He gave no promise to Borthwick—he paid no debt for him—he left him to act as he liked—Borthwick said, “I will save myself by giving up the authors!” Mr Stuart said in the most manly manner, I will not tempt you to do an act of a doubtful kind. He had not the least reason to doubt that Borthwick had a full legal right to exhibit these documents; and in truth he had. He got the papers. But he did not proceed instantly to vengeance. He took the highest advice that any man in his circumstances could procure, and he followed implicitly, temperately, and with perfect docility, the instructions which the noble and excellent person by whom he was guided thought fit to give him. They together conducted the negotiation that ensued, with complete temperance and forbearance. Renewed instances were given in the course of this of the extreme placability of his nature, joined, throughout, with the greatest manliness and resolution of character. In spite of those accumulated and long continued calumnies from which he had suffered so much, Mr Stuart was still willing, and authorized Lord Rosslyn to state, not merely that if Sir Alexander Boswell would disown the papers, but that if, even avowing them, he would say that it was a very bad joke, of which he was ashamed, and that he meant no imputation on Mr Stuart’s honour, even then he was willing to have received such an apology, and allow the matter to proceed no farther. This was refused by Sir Alexander Boswell, he recognizing himself, in the same instant, as the author of the song which has been so often referred to, and of other writings of a similar description, for all his avowals relate to a plurality of attacks. It is not a little meritorious that Mr Stuart should have made such an offer, for it is to be recollected, he was in possession of irresistible evidence of Sir Alexander Boswell’s connection with all that had been written.

Can any thing, then, I say, be more beautiful, more satisfactory, more free of all animosity, hostility, or even of undue pride, or infirmity of human nature, than this? But these his most reasonable offers being rejected, the course he took, I say, at once, was *inevitable*. I do not plead for it the apology of provocation. It was not done in heat of blood, or under the influence of any *passion*, criminal or venial. It was the deliberate act of a wounded heart, and a mind convinced and overwhelmed with the sense of its absolute necessity. In the long vista of his repeated meditations, in the cool anguish of nights and days, he saw and felt that he could not live without doing that which brought his own life into hazard, and, what to him was more painful, brought the same danger to his enemy. He was actuated by no violence, no heat of feeling; his actions now were only in unison with what his words had been before; and these showed that his motives were pure, defecated from any stain of anger or malignity. From first to last there is proof that his heart was overwhelmed with the painful sense of what he had unwillingly done to the unfortunate man who injured him; and if his courage and firmness are undeniable, while exposed to danger, the relents and kindness of his heart are equally displayed when it was over. What he said to Mr Liston and to Lord Rosslyn, is confirmed by that most pathetic interview with Mr Gibson, when he exclaimed, "Would to God I *had* taken aim, and then I might have missed him." When you compare that with the scenes and recollections which had led to it; when you find him agitated and overwhelmed, you must be satisfied that slaughter was not wished for by this person, that nothing was desired by him, but the restoration of his own dignity; you must feel that the fatal act was forced upon him, as irresistibly as if he had been the involuntary executioner of a judge's warrant, or a being doing the behests of a higher power. This gentleman, who was called, in language that disgusts and astonishes one, even in the repetition, sometimes a coward, and sometimes a ruffian,—who as a coward should have exulted in his safety,—as a ruffian have triumphed over his fallen foe? What does he do in this moment of instinctive feeling? Why, Gentlemen, you find him dissolved in speechless grief. He cannot express in language the misery he feels, upon witnessing the fate to which his unlucky hand had just consigned his enemy. His emotion, indeed, resembles more the meltings of a female bosom than the agitation of a male. When forced from this scene of distress and danger to him, and driven to a foreign land for his immediate safety, we there find him still

pursued by his melancholy reflections ; and when Mr Allan communicates to him the certainty that Sir Alexander Boswell was dead by his hands, his burst of grief is overwhelming and frightful ; and when he tries to relieve him by the consideration, that Sir Alexander's death was brought upon him by his own act, while he (the prisoner) was free from evil design, and forced to what he did, his conduct again is a demonstration of the purity and kindness of his soul ; for what does he say ?—Does this heartless ruffian exult in the agonies of his victim ? Does this bully relate the tale of his prowess ? No—he is dissolved in tears at the misery he had caused—he is overwhelmed with speechless agony. And when desired to remember that he was a mere instrument in the hands of a Higher Power, he turns immediately to those who were about him, and says, “ It may be so ; but how can I think of the condition to which I have reduced his wife and children ? ”

After what you have heard of the character of Mr Stuart, I need not refer to the commentary which it affords on his conduct, as given in evidence. The character given of him by the friends who have known him longest and best, separated as they have been from him by political opinions, is just the character I should expect of a man who is proved, by the evidence of this day, to have acted as Mr Stuart has done ; and the way in which he acted, is demonstration, that he truly deserved the character which had been given of his mind.

Take, then, his character, take his actions, and say whether you can find yourselves bound, whether you can find yourselves entitled, to pronounce him guilty of having maliciously killed his adversary, instead of irresistibly and necessarily going out as he did, in vindication of rights a million times more dear than those in support of which it is lawful to kill. I cannot doubt your answer to this question,—one only can be given.

I am afraid my anxiety has induced me to trespass far longer on your patience, than the difficulty or danger of the case required. There is certainly a puzzle in the words of some law authors. I have been anxious to dispel this. On the reason and justice of the thing, there cannot be a doubt: For, after all the admonitions and solemn warnings of the scenes we have been reviewing, and in which we are now engaged, I doubt whether there be one among you, who could bear to be called a coward, and branded as a ruffian, day by day, and after discovering that these injuries were inflicted by one known to be your equal in rank, would not incur all the hazards to which my unfortunate friend has been exposed, though few of us could imitate the mildness

with which he encountered them! I trust, therefore, you will not find him guilty, for doing that which, in his circumstances, you must feel that every one of you would have done; that which you must in your hearts wish, that the best and dearest friend you have in similar circumstances should do—that you will not, in a word, find a man guilty of acting maliciously while you believe him to have been absolutely free from malice. I trust, therefore, that, not in violation of the law, but in dutiful observance of its spirit and clear injunctions, and rigorously giving it effect, you will find him Not Guilty of the crime with which he is charged; and thus restore him untainted to that society of which he is the delight, and in which he performs so many useful offices; and, at the same time, in part at least, to that peace of mind which, with his feelings and his heart, I fear it is not in the power of your verdict, or of any human tribunal, ever effectually or completely to restore.

THE LORD JUSTICE-CLERK.

Gentlemen of the Jury,—In this important case, which is now brought to a close, I proceed to submit to your consideration such observations as, in the discharge of my duty, it is incumbent on me to state to you, before you declare the verdict you are to give.

I am extremely happy I have the honour to address a Jury of such respectability as that I now see before me; and extremely gratified, as I am sure the Court in general is, with the great patience and attention you have bestowed upon this trial. I have not a doubt but you will consider it to the end with the same patience; that you will reflect upon it with caution and circumspection; and return a verdict which, in your consciences, you shall think to be founded in wisdom, justice, and truth.

It is necessary for me to call your attention, in the first place, to what I consider to be the law of Scotland as applicable to this specific charge. The charge exhibited against the unfortunate gentleman at the bar is that of wilful murder, which is stated in the indictment to have been perpetrated in a duel with the late Sir Alexander Boswell, on the day there mentioned.

You will observe, that the charge is, that, having conceived malice and ill-will against the unfortunate gentleman now no more, the prisoner did challenge him to fight a duel; that a

meeting was concerted in consequence, which meeting took place in the neighbourhood of Auchtertool, and that there the deceased received that wound which terminated his existence. Now, the nature of this charge, apart altogether from the defence, is that of a killing or slaughter perpetrated in a duel, which duel is stated to have been concerted beforehand; and it is, therefore, necessary to call your attention to the authorities in our law, in regard to a charge of this nature. I am bound in duty to bring the law distinctly into your consideration, in reference to the charge as laid, and in reference, moreover, to that defence which has been urged by the two learned gentlemen, who addressed you for the prisoner with such consummate ability and eloquence, and to say whether the facts of this case bear them out or not in this their defence.

I prefer stating the law in the words of our authors, rather than in my own words, and I begin with mentioning an ancient writer, Sir George Mackenzie, who has a distinct article, or *title*, as he calls it, on duels, on the unlawfulness of which he pronounces a clear and authoritative opinion, on which I shall not trouble you with enlarging, but simply refer you to his emphatic introduction: "Duels are but illustrious and honourable murders; and, therefore, I have subjoined this title to the title of Homicide: 'This is that imperious crime which triumphs over both publick revenge and privat virtue, and tramples proudly upon both the law of the nation, and the life of our enemy. Courage thinks law here to be but pedantie, and honour persuades men, that obedience here is cowardliness.'" (*Mackenzie's Crim. Instit. Tit. XII. p. 72.*)

I shall now call your attention to the authority of Mr Baron Hume, who, though still living, is the highest authority that can be resorted to, and whose work on the criminal law is daily founded on in this Court, and is deservedly quoted as the highest authority, both at the bar and on the bench. Mr Hume, in treating of the several pleas regarding self-defence, expresses himself thus: "Even when all these considerations unite in support of the pannel's plea, as relative to the moment of killing, there may, however, be one circumstance more in the case, which shall hinder them from procuring his complete acquittal. This is, if the pannel has himself in any degree been the cause of the fatal strife; and this he always is in the estimation of the law, when he and the deceased meet in pursuance of a concerted appointment to fight a duel. For this deliberate resolution to kill a fellow-creature, the law cannot but hold both par-

ties equally and deeply blameable ; and the full plea of *self-defence* is, therefore, out of question in all such cases, whatever may have been the origin and history of the quarrel, and though the deceased have fallen a victim to his own insolence or indiscretion. As little can the survivor have the benefit of an entire justification, on account of any favourable circumstance which happens in the course of the combat, or of the conference between the parties after they have met upon the ground. Put the case that John and James deliberately appoint to fight with mortal weapons ; and in the course of the combat James is wounded and retires, and calls to John to desist ; but John refuses, and follows up his advantage so hotly, that James, purely to save his life, is at last constrained to kill. If this is not even a case of murder, (and I rather think it so,) at least it is exclusive of the plea of self-defence ; because the danger and the necessity are occasioned by John himself, are the result of a situation which he has deliberately courted." (*Hume on Crimes*, Cap. VI. p. 224.)

He then puts the case of Robert Robertson : " In the case of Robert Robertson, it was even judged to be murder in the survivor, though he offered to prove, that, on his first *coming to the field*, he earnestly declined the combat, and that he was threatened and reviled, and drawn upon by the deceased, so that he had no choice, and was forced to defend his life. But, though urged to the effect of *alleviating* only, (and I rather think it *was* relevant to *that* effect,) the plea was disregarded, and the libel alone was remitted to the assize. There is thus no room for a plea in mitigation even, and much less an entire acquittal, when the parties meet by a deliberate appointment, and fight fairly on equal terms, without either of them giving back or declining the strife. Nay, more, it has hitherto been held in our practice, (though it may be otherwise in the law of England,) that is, nothing less than murder, though the parties fight in heat of blood, and on a sudden quarrel ; if they go out, however, by agreement, with that design, and how fair and equal soever the circumstances of the combat."

In illustration of this he refers to the case of William Douglas in 1667, and of Gray in 1678, and a still later one in 1691, Master of Tarbet and others, in which these precepts of the law are completely established.

It is true, as Mr Jeffrey has stated to you, that these cases are all of an ancient date, and Mr Hume, after alluding to this case of Gray, has a note which I shall read to you, be-

cause in the last edition of his work, the learned author repeats his former view of the law, having distinctly in view the recent cases, which were very properly read to you by Mr Jeffrey: "Much intercession was used to save Gray's life; and on a bill to the Privy Council, he obtained a respite for a month, and even a remit to the Lords of Justiciary to reconsider the grounds of the verdict. But in the end, (says Fountainhall, Vol. I. p. 2,) 'after the poor man was put in hopes of his life, he was beheaded. He died with more courage than could justly be expected from one of his education. It was urged for him, the confession proven was merely extrajudicial; and he was not presumed to be the aggressor, he being but a tradesman, and old, near the age of fifty, the other a gentleman, and young, and known to be a *romp*.'

"Though such is the undoubted law on the subject of duel, and exemplified in the instances mentioned in the text, it has so happened, that on several later occasions of trial for homicide committed on challenge to fight, the pannels have had verdicts of acquittal. This was the issue in the case of George Rae, 18th June 1798; and of Macdonell, 6th August 1798; and of Alexander Cabill, 2d and 3d January 1811."

Here, then, is the opinion of Mr Hume; and I call your attention to another author now no more, who had a very extensive practice in criminal law, and has left behind him a work of value on the subject. Mr Burnett, in treating of self-defence, expresses himself thus:—"It has been made a question how far *self-defence* is in any case pleadable, where there has been an agreement to fight, and parties have met in consequence of such appointment. It has been said, that, in all such cases, as the killer has brought the *necessity* on himself, and his agreement to fight bespeaks a deliberate purpose to kill, he cannot plead justification on the principle of *self-defence*, or even a mitigation of his guilt, on the footing of provocation and *heat of blood*.

"There seems, however, room for distinguishing between a combat where parties fight *de recenti*, immediately on the quarrel, and almost on the spot, and a combat after some interval of time, with due preparation of weapons, and an adjustment of the forms usually observed on such occasions. The first may truly be considered as a combat in *heat of blood*—the other as a cool and deliberate act, savouring of malice and revenge, and possessing all the characteristics of murder."—(*Burnett's Crim. Law*, Cap. I. p. 47.)

He then refers to the authority of Judge Foster, who is also mentioned by Mr Hume, and concludes thus: "It is agreed, however, on all hands, that a deliberate act of *duelling* excludes the plea of self-defence; and in strict law this holds, whether the indictment is laid merely for murder at common law, or on the act of James VI. against duelling; for where the act is deliberate, and of set purpose, and still more where it is the result of a previous concert, *self-defence*, properly speaking, can have no place; and, in such case, it can make no difference at common law, who was the challenger or first aggressor, though, under the statute, (1600,) the *provoker* (as he is there called) is punishable *with a more ignominious death*."

But he adds: "Notwithstanding of this, it may be difficult for a jury to lay out of view altogether, in a case of *homicide* in a duel brought to trial at common law, the circumstance on which side the original aggression lay, or the nature of the antecedent provocation, (and, much more, any alleged *unfairness* by inequality of weapons, or in manner of attack, or mode of fighting,) without regard to *who was the immediate challenger*; thereby making allowance so far for the notions of honour which usage and custom have sanctioned."

"We have a late example where the jury evidently proceeded on some of these grounds. This was the case of Lieutenant George Rae, 18th June 1798, who in a duel killed Lieutenant M'Vean, of the same regiment. Rae gave the challenge, but the deceased was the aggressor. It appeared in evidence, that he had given the lie to the prisoner in a public mess-room, and being desired by the corps to make an apology, he did so, but in so improper a manner, that the corps thought it an insult on them; on which he said he meant no insult to the corps, but to Rae, whom he afterwards called 'scoundrel.' The consequence of this was a challenge from the prisoner. The libel was laid as for murder at common law, but the jury returned a verdict of 'Not Guilty.'"

I have brought these two opinions of Mr Hume and Mr Burnett fully and distinctly before you, and demanded your attention to the cases to which they refer, as showing the course of modern practice on this subject. Farther, as both Mr Hume and Mr Burnett mention the authority of the law of England, I think it right that I should lay distinctly before you the state of that law; and I shall quote the highest authority for it, that of Judge Foster, in his discourse on

Homicide. He expresses himself thus: “ But in this, and indeed in every other case of homicide upon provocation, how great soever it be, if there is sufficient time for passion to subside, and for reason to interpose, such homicide will be murder.”—*Foster’s Crown Law*, Disc. II. cap. v. p. 296.

Then he puts the case of a person finding another in the act of adultery with his wife: “ For let it be observed, that, in all possible cases, deliberate homicide upon a principle of revenge is murder. No man, under the protection of the law, is to be the avenger of his own wrongs. If they are of such a nature for which the laws of society will give him an adequate remedy, thither he ought to resort. But be they of what nature soever, he ought to bear his lot with patience, and remember *that vengeance belongeth to the Most High*.

“ Upon this principle, deliberate duelling, if death ensueth, is, in the eye of the law, murder. For duels are generally founded in deep revenge. And though a person should be drawn into a duel, not upon a motive so criminal, but merely upon the punctilio of what the *swordsmen falsely call honour*, that will not excuse. For he that deliberately seeketh the blood of another upon a private quarrel, acteth in defiance of all laws, human and divine, whatever his motive may be.

“ But if, as I said before, upon a sudden quarrel, the parties fight upon the spot, or if they presently fetch their weapons, and go into the field and fight, and one of them falleth, it will be but manslaughter; because it may be presumed the blood never cooled.

“ It will be otherwise if they appoint to fight the next day, or even upon the same day, at such an interval as that the passion might have subsided; or if, from any circumstances attending the case, it may be reasonably concluded that their judgment had actually controlled the first transports of passion before they engaged. The same rule will hold, if, after a quarrel, they fall into other discourse or diversions, and continue so engaged a reasonable time for cooling.”

In this opinion, Judge Foster is confirmed, by the opinions of single Judges, and by that of the whole body of the Judges of England, as delivered in different cases mentioned in the Books; so that there cannot be a doubt, that the law of England is correctly stated by that learned person.

Having thus stated to you the law, as applicable to such cases, it is now necessary for me to advert to what the real

nature of this charge is, as stated, first, in the indictment and evidence for the Crown ; and, second, in the defence.

This charge states, that malice was entertained by the prisoner at the bar against the deceased, in a way somewhat different from that ordinary species of malice which the law itself implies in the case of a deliberate and preconceived murder ; for, here it is said, “ In so far as you the said James Stuart having conceived malice and ill-will against the late Sir Alexander Boswell of Auchinleck, Baronet, and having formed the unlawful design of challenging the said Sir Alexander Boswell, and others of the lieges, to fight a duel or duels, you did, upon the 9th, or one or other of the days of March 1822, in order to enable you the better to accomplish your said unlawful design, repair to Glasgow to obtain, through the medium of William Murray Borthwick, formerly one of the proprietors or printers of the newspaper called the Glasgow Sentinel, and then a prisoner in the jail of Glasgow, the manuscripts of sundry articles which had been published in the said newspaper, and other papers and documents connected with said newspaper, which were then in the premises, in Nelson Street of Glasgow, occupied by Robert Alexander, editor and proprietor of the said newspaper, and in the lawful possession and custody of the said Robert Alexander ; and the said William Murray Borthwick having been liberated from jail, as arranged and concerted by or with you, and having on the 11th, or one or other of the days of the said month of March, carried, or caused to be carried away from the said premises, in Nelson Street of Glasgow, sundry writings, the property, or in the lawful possession of the said Robert Alexander ; and having brought, or caused to be brought, the said writings to the Tontine Inn or Hotel in Glasgow, where you then was, you did thereby obtain access to the said writings ; and having found, or pretended to have found, among them some writings holograph of the said Sir Alexander Boswell, you did wickedly and maliciously challenge the said Sir Alexander Boswell,” and so forth.

Now, in the first place, it is for you to say,—whether this narrative is made out ; but, indeed, I did not hear any thing said by the Public Prosecutor, that he had made out that part of the narrative of the indictment. Farther, the evidence for the prisoner seems to have shewn, that he had no sort of conception, before he had made the discovery in Glasgow, of who was the author of the offensive articles.

You will recollect the testimony of Mr Spalding, Mr Hen-

derson, and Mr Gibson, as to the utter ignorance of the prisoner on this point. Their testimony is clear and explicit as to this, and distinctly proves that, at all the confidential meetings, though Mr Stuart was convinced that Borthwick was not the author of these libels, yet he had not the slightest conjecture that Sir Alexander Boswell was at all concerned with them; and you will recollect, that, though Spalding and Henderson, who accompanied him to Glasgow for the purpose of getting access to these papers, were with him both on the way and there, not a syllable escaped him by which they were led to suppose that he suspected Sir Alexander Boswell to have had any concern in the matter. Nay more, both Spalding and Henderson positively swear, that when the papers were examined, and something was said by Borthwick which led them to suspect Sir Alexander Boswell, Mr Stuart declared that he had never suspected Sir Alexander, and seemed to feel real surprise and astonishment.

It is for you then to say, whether you can, in reference to this part of the narrative of the charge, find, that the prisoner had previously conceived malice against Sir Alexander Boswell, and that, in furtherance of this, he had set out to Glasgow to obtain papers which should enable him to prove that gentleman's connection with the matter. To me it appears, that this part of the narrative, so far from being proved, has been completely negatived, even by the evidence of the Public Prosecutor himself.

The case being discharged of this part of the indictment, the question that remains is, Whether, in the view of the law which I have stated to you, there is not an obligation upon you to find a verdict against the prisoner at the bar, on account of the duel itself, on a review of the evidence laid before you? Now, Gentlemen, at this hour of the morning, I shall not consume your time with a detail of that evidence. Generally speaking, the evidence has been given in a very distinct manner; and I would, in particular, say, that the evidence of the Noble Lord, one of the seconds, was given in the most correct manner I almost ever heard.

In the *first* place, then, you will take into your consideration the alleged offensive articles of which the unfortunate gentleman at the bar complained, and had good cause to complain. You have it in evidence that, in the newspaper which has been mentioned, various offensive articles of the most aggravated nature, with regard to his character and reputation as a man of courage and honour, did appear,—

nay, that, though some of them are not quite so gross, a reiteration of these charges and insinuations continued for some considerable time. I need not remind you of the tenor of the song, nor of the letter signed *Ignotus*, nor of the other two articles. They were read to you,—such parts of them, at least, as were material and most offensive,—by the learned counsel at the bar.

You will also consider the evidence that has been produced as to the manner in which Mr Stuart got access to these writings. I have already glanced at this in reference to another point of the question. But you will now consider whether the evidence warrants a conclusion that Mr Stuart was guilty of any impropriety in the mode of getting access to them. Now, in the *first* place, I would remind you, that you are not trying him here for any such charge. But, even if I did hold it as a charge before us, I would ask whether, after the evidence given by Mr Henderson, the country agent, who conveyed the offer, and of Mr Spalding, the town agent, who communicated it here, and of Mr Gibson, it can be considered that there is any proof that Mr Stuart took any improper steps towards the acquisition of these writings?

The evidence goes to this, that Mr Stuart got information through Henderson, that Borthwick was disposed to compromise the action of damages, and had desired Mr Henderson to make proposals; that Mr Stuart promised no terms in return; but said, if Borthwick gave up the author or authors of these libels, he would then consider what he should do; that, at present, he would enter into no engagement of a positive nature. The evidence of Mr Henderson positively negatives any suspicion that Mr Stuart advanced one farthing of the money which enabled Borthwick to leave the jail. Henderson positively swears that the L.50, which he consigned, was money advanced out of his own proper funds, and that not one farthing came from the prisoner at the bar. Mr Gibson tells you, that the consignment was made in consequence of what had already happened to Borthwick in being ousted from his office; and that, lest Alexander should get hold of the manuscripts and destroy them, he advised that no time should be lost in liberating Borthwick from jail; adding, that he would rather advance the money himself than run that risk.

But it is not established that Mr Stuart offered any thing at all. Whether Mr Stuart went to Glasgow, or remained there or not, for any time, we have no business to inquire.

But as to any appearance of his being concerned in any undue invasion of the premises we heard no evidence whatever.

You will next consider what the evidence says of the authorship of these papers. It must be fully in your recollection that Lord Rosslyn said he had examined them with care, and in particular the offensive song, looking at the paper and examining the water-marks and post-marks ; and his Lordship has told you that he conceived himself authorized to say, that there was strong presumptive evidence that these articles were in the hand-writing of Sir Alexander Boswell. I therefore conceive that a most material circumstance for you to consider is,—and the prisoner is fully entitled to the benefit of it—the moderate communication which the Earl of Rosslyn thereupon made, as to the terms of which his Lordship was fully confirmed by the evidence of Mr Douglas ; namely, if Sir Alexander Boswell, on the one hand, should say that the papers were not in his hand-writing, or that he had nothing to do with them, that that would put an end to all further inquiry, and would be held as negating all evidence ; on the other hand, that if he would say, supposing them to be his, that the thing was a bad joke, and he was sorry for it, the matter would then be allowed to drop.

Sir Alexander Boswell acknowledged the signed letter to be his, but he declined saying any thing as to the unsigned papers. He did this by the advice of his friend, who thought it the most prudent course ; though Mr Douglas, in his evidence, has admitted that he had no doubt, from his conversations with the unfortunate gentleman deceased, that they were written by him,—two verses of the song, indeed, having been repeated by him to Mr Douglas. But in the delicate situation in which that gentleman was placed, it was deemed right to take the course which he did.

Something was put by way of hypothesis to Lord Rosslyn and Mr Douglas, as to what would be their opinion, supposing that they were not sure that these papers were in Sir Alexander's hand-writing. I am much afraid, however, it is not necessary for us to speak to that at all ; for you have heard the evidence with regard to the Song, the letter signed *Ignotus*, the paper with the name *Mark Tod*, and the letter beginning "The late Lieutenant James Stuart." You have had evidence as to these, of the truth of which there cannot be the remotest suspicion ; and I have no hesitation in saying, that, in my opinion, it leaves no doubt as to whose hand-writing they were. You have, for example, Mr Lizars, a witness for the Crown, who was desired to look at these articles along with the

others, and who told you, that though he formerly held the opinion that the song was not in the same hand-writing with the letter, yet, on farther consideration, he did come to think that they were the same. He detailed his reasons for thinking so, such as that a great many letters were exactly similar, and mentioned other things which satisfied this professional man that the writings were in the same hand. But besides, you had Dr Coventry and Mr Dalrymple Gardner, who swore that there could be no doubt as to the hand-writing.

I need not detain you with the proceedings to which this discovery led. I only wish that the binding over by the Sheriff could have been more effectual; and I know that had I been applied to, I should have done my utmost to bind them over, and I should only have regretted that my own powers in this respect were not more extensive.—The result of all was, that the parties met, and took their ground, each armed with a pistol, that they both fired together, the prisoner first, and the deceased after a momentary interval, and the deceased fell. On this part of the case, the evidence of Lord Rosslyn, Mr Douglas, and the surgeons in attendance, is complete.

Therefore, Gentlemen, you have to attend, in the first place, to the evidence of what led to this unfortunate quarrel; the nature of the provocation, of the wrong of which the gentleman at the bar complained, and which is to be found in the terms of those articles that were put in in evidence; the measures which were attempted to prevent a meeting; the proposal which was made through the medium of Mr Stuart's second, and all that took place after their failure. You have also, of course, to attend minutely to the conduct of Mr Stuart, both previous to and on the field. You have the communication made by him to his surgeon Mr Liston, on the road, distinctly stating that he had no malice against the deceased; that, on the contrary, he was related to him distantly, but that no alternative was left as to the course which he must pursue. Then, you will recollect the evidence of Lord Rosslyn, that in nothing that he said did Mr Stuart appear to be actuated by malice or rancour; but that, on the contrary, he felt himself to be under an inevitable necessity of taking the step which he did, merely to vindicate himself from the injury he had received, and with no intention of deliberate malice against Sir Alexander Boswell; in the propriety of all of which Lord Rosslyn told you that he entirely agreed.

You will take these matters into recollection, and keep in view also the evidence given by Mr Gibson as to the very becoming manner in which Mr Stuart expressed himself to

him after the unfortunate rencounter,—the great concern he showed,—his uncommon grief,—the agony in which he was when he communicated the fatal intelligence,—the opinion which Mr Gibson felt himself able to draw, that he had not the slightest personal animosity against the deceased gentleman. You will compare all this with the evidence you have, both from Mr Douglas and Lord Rosslyn, as to the fairness of the proceedings of the prisoner, on the field,—his wish to show civility to Sir Alexander Boswell, which Lord Rosslyn thinks had not been observed by the deceased,—but the intention to show it is, of course, a favourable circumstance. Then you will recollect the evidence you heard as to Mr Stuart's conduct in France, when he received the intelligence of his antagonist's death. Mr Allan swears, that he received it with great emotion, and in a manner which affected him much at the time,—that his sorrow continued afterwards unabated,—that for a fortnight, during which Mr Allan continued to see him, he brooded over it much, seeming to feel it deeply ; and when Mr Allan intending to comfort him, reminded him, that he was forced to what he did, and that the other had brought it all on himself, he made the affecting exclamation,—yes ! but remember his poor wife and children. He did accordingly observe, that the prisoner was deeply affected and grieved, and that he wept severely, so much so, that the witness said he himself was deeply affected.

Then you have another circumstance in the prisoner's defence, and in cases of this description it must necessarily weigh greatly, for in a case of murder, which undoubtedly requires a conviction in the minds of those who try it that there was a malicious intention of killing, the evidence of *character* is of great importance. On this point you have complete testimony. You have the evidence of Lord Rosslyn, Lord Kinnedder, Dr Robertson, Mr Erskine of Cardross, Mr Richard Mackenzie, Mr Francis Walker, Mr Walter Cook, and Mr Hay Donaldson. I hope I have not omitted any. Are there any others ? (*Upon being reminded from the bar of Mr Gibson's name*) Yes ! Mr Gibson, surely, a valuable testimony.

Now, with regard to the testimony of these witnesses, I should, with the greatest pleasure, read to you the words of all these gentlemen, for I have taken a note of what they said,—but certainly it is not necessary ; for sure I am you will all agree with me when I state to you, that I never had occasion to witness a stronger, more perfect, and more entirely

concurring body of evidence in favour of character, than the prisoner has this day exhibited. And it is another remarkable feature of the greater part of this evidence, that it has, with extreme good taste, been extracted from the mouths of gentlemen who happen to be politically opposed to the prisoner, but who invariably give the most unequivocal testimony to his good conduct, not only in general, but by stating some remarkable instances of the amenity of his temper. Mr Erskine stated, in emphatic language, that the prisoner appeared to him to possess more of the milk of human kindness than any man he had ever known. Mr Richard Mackenzie, said, that he had been twenty years in a club with Mr Stuart, and that he had never heard him say an ill-natured thing of any one ; and his late partner, Mr Hay Donaldson, told you that, though their separation was not sought for by Mr Stuart, neither this circumstance, nor any other, ever created the slightest difference between them ; and that Mr Stuart possessed a remarkable, mildness of temper, — was far from being quarrelsome, on the contrary, was always disposed to make up quarrels.

Now, with such a body of evidence as this, it is impossible to require higher testimony of the improbability of a crime such as that here libelled ; and, therefore, keeping the rule of law in view, which I have been under the necessity of laying before you, and taking into your consideration the whole evidence on both sides, every part of which you will weigh with attention, you will now consider, whether the prisoner is guilty of the crime of murder as laid against him, or entitled to the verdict of Not Guilty, which he demands of you.

Gentlemen, With respect to the defence set up this day, which, if I understand it rightly, was not so much rested upon the provocation given to the prisoner, as upon the inevitable necessity that was imposed upon him of taking the course which he did, — it does not appear to me advisable, for the sake of the law, to divest the case altogether of the nature of the *provocation* given ; neither do I conceive it the safest course for the pannel ; for it comes to be a very difficult and delicate consideration, indeed, whether, if you lay that matter apart, and then defend this case of a determined duel, terminating fatally, by saying that it was undertaken for no other purpose than rescuing the prisoner from the situation in which he was placed ; — this, I say, appears to me to be a delicate and dangerous position to put the case upon ; for I apprehend the rule of law is quite clear in cases of this description, that no false

punctilio or notion of honour can vindicate an act which terminates fatally to another fellow-creature. But take that consideration, urged as it was with all the powerful eloquence of the learned counsel, and take along with it the injuries received by the prisoner,—the uncommon provocations given,—the terms of accommodation offered and rejected,—and combine them all together ; the temperate conduct of the prisoner in the field ; his grief for the fatal issue of the meeting,—then, in my humble apprehension, you will have a case before you which, in reference to the charge made, and the evidence led in support of it, is well deserving of your most calm, deliberate, and dispassionate consideration.

In order to make way for the conclusion, to which the learned gentleman thought himself warranted to come, in asking a verdict of Not Guilty, he expatiated on the subject of duels in general, and endeavoured to justify them, or if not altogether so, to palliate them, by referring to a variety of moral writers, some passages from whose works he read to you. Now, I beg leave to say, that these may be all extremely good topics in a general discussion, but they are not what, as a Judge sitting here, I am entitled to lay any stress upon : I must look alone to the authority of law writers, and to the practice of Courts. As to what moral writers may have said of the advantages which may have arisen from this practice of duelling, this affords no safe ground of judgment.

But there were other topics referred to by the learned counsel, and which I admit are legitimate sources of judgment for you,—adjudged cases, and charges of judges in trying these cases. Mr Jeffrey has stated, and I have no doubt of the accuracy of his statement, that convictions in cases of duelling, where everything has been fair, have been extremely rare. No one can doubt of this, and it is admitted by both the authors whom I formerly quoted. Mr Burnett notices the case of Rae, the result of which he approves, but he speaks differently as to the case of Glengarry. Mr Hume, you will recollect, alludes to these cases, as well as to that of Cahill, and also says how much juries are disposed to acquit where the proceedings have been fair. You have heard, also, the names of respectable jurymen concurring in such verdicts ; but you must lay these out of consideration, and only keep in view, that, as former juries have exercised their discretion in the discharge of their office, so you must do in discharge of yours, and come to similar conclusions, only if you see sufficient grounds. You will consider the charge, the evidence for

the charge, and the strong body of evidence which has been brought forward on the part of the prisoner. You will recollect that, as to the narrative part of the charge—that of malice in seeking a quarrel—it has been directly negatived; and, with regard to any thing like personal rancour, there is the strongest evidence that no such feeling entered into the mind of the prisoner. Considering, therefore, the circumstances in which he was placed—the strong necessity he felt himself under to vindicate himself—the deliberate way and manner in which he set about his vindication, not proceeding instantly himself, but sending to the Noble Lord, whom he employed as his friend, who told him that he had no other alternative but to act as he did—the total absence of all rancour—the great sorrow that he expressed on account of the fatal consequences of the meeting, and the uncommon body of testimony to the mildness of his character,—taking all these things into your consideration, you will consider whether you can, with propriety, pronounce him Not Guilty.

Gentlemen, before concluding, I cannot help expressing my anxiety, that no misunderstanding should exist as to my opinion of the writings which led originally to this lamentable catastrophe. God forbid that it should for a moment be supposed that I, or any other Judge in this country, could approve of such publications, or look upon them with any thing but reprobation. It is one of the greatest misfortunes and evils of the present day that the country groans under, the disgraceful licence of the periodical press; and I do lament, from the bottom of my heart, that the unfortunate gentleman deceased should have had any concern with writings of this description;—but I am afraid, Gentlemen, it will be impossible to shut your eyes against the evidence by which it is proved that Sir Alexander Boswell was engaged in these writings, and that the prisoner at the bar was the object of his attacks.

You will, therefore, keep these considerations in your view, and pronounce such verdict as the circumstances of the case shall seem to you to authorize.

The Jury, without retiring, after a few moments consultation, returned their verdict *viva voce*, by their Chancellor.

Sir JOHN HOPE.—My Lord, The Jury unanimously find Mr Stuart *Not Guilty*.

The verdict was received with strong marks of satisfaction by the audience.

LORD JUSTICE-CLERK.—Mr JAMES STUART, I congratulate you on the verdict returned by a Jury of your countrymen; but, in the present state of your feelings, it would be quite improper in me to say one word more to you upon the subject.

(Interlocutor of the Court.)

The Lord Justice-Clerk, and Lords Commissioners of Justiciary, in respect of the foregoing verdict, assoilzie the panel *simpliciter*, and dismiss him from the bar.

D. BOYLE, I. P. D.

APPENDIX.

APPENDIX.

No. I.

EXTRACT LETTER from WILLIAM ADAM, Esq. M. P.
now the Right Honourable WILLIAM ADAM, Lord Chief
Commissioner of the Jury Court, to Mr STUART.

(Produced with Defences for Mr Stuart.)

My Dear Sir, *Bloomsbury Square, April 17, 1810.*

I have read with great attention your letter to James Loch of the 13th instant, and I cannot resist letting you know what my feelings are as to the very great obligation all the country, and particularly that part of it connected and benefited peculiarly by the Great North Road, are under to you. These have been most disinterested and kind exertions. Your services about the whole business of the Ferry have likewise been most important, and are, in my opinion, equally entitled to the public thanks, which any trifling personal accommodation to yourself could never have excited you to, without the general and liberal inclination to promote the public good.

Yours, most faithfully,

WILLIAM ADAM.

No. II.

EXTRACT LETTER from Ditto to Ditto.

My Dear Sir, *Bloomsbury Square, April 25, 1811.*

You did admirably in perpetuating the tolls, and we who are in the line, as well as the whole country, are under the

greatest obligations to you (who are not) for the great aid you have given us. Indeed, without your efforts, both the road and Ferry must have gone to the dogs.

Yours, most sincerely,

WILLIAM ADAM.

No. III.

RESOLUTIONS of a GENERAL MEETING of the NOBLEMEN, FREEHOLDERS, &c. of the Western District of Fifeshire.

In a General Meeting of the Noblemen and Gentlemen, Freeholders, Justices of Peace, Commissioners of Supply, and Heritors of the Western District of the County of Fife, held within the Town-house of Dunfermline, 4th January 1816, in consequence of a letter of requisition inserted in all the Edinburgh newspapers, published on, and since 29th December 1815, to consider of the proper steps to be taken upon occasion of the Lord Lieutenant of the county having informed Mr James Stuart, younger of Dunearn, that his name is omitted from the new Commission of the Peace for the County of Fife, lately passed under the Great Seal, at the instance of the Lord Lieutenant; which requisition is signed by the Right Honourable the Earl of Moray; the Right Honourable the Earl of Elgin; the Right Honourable the Lord Chief Commissioner; Sir Charles Halkett of Pitfirrane, Baronet; Mr Strachan Blackwood of Pitreavie; Dr Robertson Barclay of Keavil; Mr Hunt of Pittencrieff; Mr Erskine of Kinnedder; Mr Scotland of Luscar; Mr Walker of Sunnybank; and Mr Cuninghame of Duloch.

SEDERUNT.

The Right Honourable Francis Earl of Moray,
The Right Honourable Thomas Earl of Elgin and Kincardine,
The Right Honourable the Lord Chief Commissioner,
Sir Charles Halkett, Baronet, of Pitfirrane,
Captain R. H. Moubray, R. N. and C. B.
Dr James Robertson Barclay of Keavil,
James Hunt of Pittencrieff,
John Cuninghame of Duloch,
Thomas Scotland of Luscar,
John Scotland, younger of Luscar,

Robert Walker of Sunnybank,
 Alexander Colville of Hillside,
 Alexander Colville of Middlebank,
 Major David Wilson, Provost of Dunfermline,
 George Aitken, younger of Hill of Beath,
 John Sutherland of Eastfield,
 Robert Wemyss of Cuttlehill,
 James Moodie, younger of Cocklaw,
 Captain John Wardlaw, Dean of Guild for the Guildry of
 Dunfermline,
 Thomas Mill of Blair,
 Henry Bardner of West Saline,
 Andrew Colvill of Barnhill,
 William Thomson of Stevensons Beath,
 Dr James Stenhouse of Comely Park,
 Robert Russell of Drumtuthil,
 Hugh Gray of Bushes,
 James Stenhouse of Northfod,
 John Purvis, younger of Lochend,
 James Douglas of Garvochwood.

The EARL of MORAY chosen Preses.

The Preses communicated to the meeting the following documents :

- 1st, The before-mentioned letter of requisition.
- 2d, Letter from Mr Thomas Horsbrugh to Mr Stuart, dated 25th December 1815, which is in the following terms:—

My Dear Sir, *Cupar, December 25, 1815.*

I am favoured with yours of the 23d last night. I am not at liberty, at present, to mention what names appear, or do not appear, in the new Commission of the Peace. I understand Lord Morton is to call the Magistrates together, on purpose to open it; and the moment that is done, I will send you a full list of the whole nomination.

You was appointed a Justice of Peace, by an interlineation in the commission which passed in 1797, and which took place in July 1800, by the commission having been sent to London, and the seal being again applied by the Chancellor. Lord Kellie is in possession of the list of the new nomination.

I always am, with the highest regard,

My dear Sir,

Yours most faithfully,

THOS. HORSBRUGH.

3d, Copy letter from Mr Stuart to the Lord Lieutenant of the County in the following terms :

North Charlotte Street, Edinburgh,
December 27, 1815.

My Lord,

I am sorry to be under the necessity of addressing your Lordship, that I may, from the most authentic source, obtain the knowledge of a fact, upon which I shall have occasion to act, if it turns out as it has been represented to me.

Mr Cheape of Stratyrum having informed me, that my name is left out in the new Commission of the Peace, which your Lordship has obtained for the County of Fife ; and that Lord Kellie, who has the list of the Justices of Peace in his hands, told him so, I wrote to Mr Horsbrugh, general clerk to the Justices of Peace at Cupar, to ascertain the fact. He informs me, in reply, that Lord Kellie has a copy of the list ; and he adds, that he is not at liberty at present to mention what names appear, or do not appear, in the commission ; and that he understands that your Lordship is to call the Magistrates together, on purpose to open it, and the moment that is done, he will send me the full list.

May I request of your Lordship to take the trouble to supply me with the information, which I have failed in obtaining from Mr Horsbrugh, in order that I may possess a correct knowledge of the fact from the most authentic source ; and I trust that I am guilty of no impropriety in endeavouring to ascertain it, or in adding, that if your Lordship declines to make the communication which I have solicited, I shall consider the fact to be as Mr Cheape has represented it.

I have the honour to be,

My Lord,
Your Lordship's most obedient servant,
JA. STUART.

The Right Honourable the Earl of Morton,
Lord Lieutenant of the County of Fife.

And 4th, Letter from the Earl of Morton to Mr Stuart, dated 28th December 1815, in the following terms :—

Sir, *Arniston, December 28, 1815.*

Your letter of the 27th, which followed me from Dalmahoy to this place, arrived too late in the evening for me to think of immediately dispatching your messenger in such weather ; I have, therefore, detained him until this morning.

I can have no hesitation, Sir, *in satisfying your curiosity*, by informing you, that the information which you have received from Mr Cheape of Stratyrum is correct, and that your name is not included in the new Commission of the Peace for the county of Fife.

I have the honour to be,

Sir,

Your most obedient humble servant,

MORTON.

James Stuart, Esq. junior of Dunearn.

The Meeting having had the fact of Mr Stuart's exclusion from the Magistracy of this county thus ascertained, and being most anxious to adopt the most speedy and efficacious, and, at the same time, the most respectful means of securing Mr Stuart's services to the district as a Justice of the Peace, upon the motion of the Lord Chief Commissioner, seconded by the Earl of Elgin, Resolved unanimously to make it known to the Lord Lieutenant of the county :

That Mr Stuart has been fifteen years a Justice of Peace for the county of Fife :

That he has, during these fifteen years, diligently and regularly acted in that capacity for this district, in which his country residence and a principal part of his property is situate :

That he has consequently given regular attendance at the Justice of Peace Courts held at Dunfermline :

That he has never permitted his business in Edinburgh, his necessary residence there during the greatest part of the year, or his numerous and important occupations, to interfere with his attendance, or with his duty as a magistrate of the county of Fife, either at the head town of the district, or elsewhere :

That Mr Stuart's conduct as a Justice of the Peace has been distinguished for knowledge, ability, and integrity :

That his unremitting activity and diligence, combined with his other superior qualifications for the office, will render his exclusion from the magistracy (in which his conduct is not only unimpeached, but is highly meritorious) an irreparable loss to the western district :

That besides the ordinary duties of Justices of Peace, there are certain local duties of the greatest importance to the public, which the Justices of the western district of the county of Fife have to discharge :

That those duties have in part been long attached to the office, and arise in part out of the act of Parliament which

passed in 1809, for the improvement of the Queensferry passage :

That many of the most important regulations for the good government of that Ferry require the authority of a Magistrate as well as that of a Trustee :

That Mr Stuart has, ever since the act of Parliament passed for the improvement of the Ferry, given constant attendance at the regular meetings, and on many other occasions :

That it is greatly owing to his unremitting exertions, in the double character of Magistrate and Trustee, that the public enjoy the benefit of that regularity, good conduct, and ready service now afforded at that passage :

That this Meeting, anxious as they are, and as they have already expressed themselves to be, to take the most effectual and respectful mode of securing the continuance of Mr Stuart's most important and unremitting services to this district, to the county, and to the public at large, hereby empower and direct the Earl of Moray, as their preses, to take the earliest opportunity of conveying this minute to the Earl of Morton, his Majesty's Lieutenant for the county of Fife, not doubting, that, when these things are brought thus distinctly to his Lordship's knowledge and observation, that he will adopt the proper course for having the name of James Stuart, Esquire, younger of Dunearn, inserted in the new Commission of Peace for Fifeshire :

That the preses do request a written answer to this communication on or before Tuesday next, that the district may be informed whether their recommendation is to be complied with :

That the Earl of Moray, the Earl of Elgin, the Lord Chief Commissioner, Mr William Erskine, Advocate, Mr Cuninghame, Advocate, and Mr Scotland, be a committee, to take such further steps as may be necessary, and to apply to the Convener and Sheriff-depute for a meeting of the county, if the committee should deem it proper :

That the committee be an open committee for all the gentlemen in the western district, to whom the requisition for this meeting was addressed :

That they do meet at Edinburgh or elsewhere, as the Convener may think most advisable :

That the Earl of Moray be the Convener.

Upon the motion of the Lord Chief Commissioner, the thanks of the meeting were unanimously voted to the Earl of Moray for his conduct in the chair ; and, upon the motion of the Earl of Elgin, the thanks of the meeting were also unani-

mously voted to the Lord Chief Commissioner for the services which he has rendered to the district, and for the trouble which he has taken upon the present occasion.

(Signed) MORAY, *Preses.*

Extracted upon this and the ten preceding pages, by

(Signed) DA. BLACK, *Clerk.*

Drumsheugh House, January 9, 1816.

The committee, in consequence of a summons by the Earl of Moray, their Convener, met here this day.

Present,

The Earl of Moray,

The Earl of Elgin,

The Lord Chief Commissioner,

William Erskine, Esq. Advocate,

J. Cuninghame, Esq. Advocate,

Thomas Scotland, Esq. W. S.

The Earl of Moray read a letter from the Earl of Morton as follows :—

Dalmahoy, 6th January 1816.

My Dear Lord—I received yesterday the honour of your Lordship's letter of the 5th, inclosing, by the direction of the very respectable meeting which took place at Dunfermline on the 4th of this month, the minutes of the proceedings of that meeting.

Having, at the instance of the county of Fife, applied for a new Commission of the Peace, it became incumbent on me, on my official responsibility, to recommend to the Lord Chancellor, for insertion in that commission, a sufficient number of such persons as appear to me to be properly qualified for discharging the duties of Justices of the Peace. I have accordingly done so, and I am convinced that the gentlemen whom I have so recommended will be found fully adequate to the discharge of these duties.

Since, however, so many gentlemen for whom I entertain the highest respect, have expressed so earnest a wish for the insertion of the name of Mr Stuart in the commission, I shall avail myself of this opportunity to testify that respect, by transmitting their recommendation to the Lord Chancellor. I have the honour to be, with great truth, my dear Lord, your Lordship's faithful and obedient humble servant,

(Signed) MORTON.

Lord Moray then read his Lordship's letter in reply, as follows :

Edinburgh, January 8, 1816.

My Dear Lord—On my return from Mrs Douglas's funeral, I received your Lordship's most polite letter; and it will give me the greatest satisfaction to make the contents of it known to all the gentlemen to whom your Lordship refers. I have the honour to remain, my dear Lord, yours sincerely,
(Signed) MORAY.

The committee resolved to transmit this minute to Mr Black, the clerk of the meeting held at Dunfermline on the 4th instant, with instructions that he should send a copy of this minute to every gentleman who was present at the meeting at Dunfermline on the 4th instant.

No. IV.

LETTER—The EARL of KELLIE, (Vice-Lieutenant of the County of Fife during 19 years, while Mr STUART was a Deputy-Lieutenant,) to Mr STUART.

(Produced with Defences for Mr Stuart.)

My Dear Sir,

London, 1st December 1819.

Permit me to tell you, that it gives me great pleasure to understand that you and Lord Morton have shaken hands, so that all unpleasant bygones will be forgot, and that you are to take your proper situation in our Yeomanry. Though you and I differ somewhat in politics, yet I am sure we will never differ in matters that regard the good of our county, and, I may say, of the country at large. Believe me, with much esteem,

My Dear Sir,

Yours, most obediently,

KELLIE.

No. V.

EXTRACT from an Article in the *First Number* of the *Glasgow Sentinel*, entitled, "Mr JAMES STUART and the LORD ADVOCATE."

Our readers will recollect that we sometime ago introduced Mr Stuart to their notice, on the occasion of his mean and unmanly attack on Mr Stevenson. They are perfectly

aware that the subject-matter of Mr Stuart's complaint against that gentleman was the appearance of a paragraph in the *Beacon* newspaper, which no man who read it could conceive it either to be immoderate or untrue. At the time of her late Majesty's threat to visit the Scottish metropolis, that publication, in descanting on the characters of the persons most likely to welcome her, stated that they (the conductors of the *Beacon*) *did not think that any one above the rank of Mr James Stuart would desire to be presented to her, or words to that effect.* It is true, that the allusion to Mr Stuart's rank, which he is very anxious to talk about on all occasions, is highly ironical; but surely there is nothing in it wonderfully offensive. Be that as it may, the fine feelings of the descendant of the Stuarts could not withstand it. He waited on Mr Stevenson, the supposed editor of the paper, remonstrated with him, and ultimately launched forth into a correspondence on the subject, in which, every body knows, Mr Stevenson conducted himself like a man of sense and delicacy, and Mr Stuart in a manner rude and every way unhandsome. The sequel of his behaviour confirmed this. He attacks Mr Stevenson in the streets of Edinburgh, in the most brutal manner, and attempts to belabour him with a horse-whip, while his own servants, brought from Fife for the express purpose, were employed to hold Mr Stevenson's hands from any retaliation. It is needless to offer any proof of these facts: they are perfectly notorious, and reluctantly admitted by the aggressor himself.

What did Mr Stevenson do to take amends for this gross outrage upon his person? Just what any gentleman of his respectability should have done, and what no person of the least claim to the character of a gentleman could have avoided. He sought satisfaction from his antagonist. But, oh shame to the dishonoured blood of the house and name of Stuart, he, with a meanness only discernible in low life, and in humble society, sought his personal safety in the most glaring cowardice! The blustering and the passionate are always in the rear of danger. James Stuart was consequently posted as a coward and a poltroon. The very rabble and oyster-women on the streets of Edinburgh read the label, mused upon the circumstances, and blushed for their *patriot*.

We are not the advocates of duelling: God forbid. We would not stain our hands nor our consciences by any participation in its murderous subterfuges. But if ever there was a case that loudly called for satisfaction, it was the case of Stevenson. And yet it was scarcely worth his pains.—When

the heartless ruffian seeks for revenge, for ideal injury, by employing his minions to hold the arms of the person he abuses, we would consider him utterly undeserving of the satisfaction of a gentleman, and we would desire to hold him up to the unalloyed opprobrium of mankind.

Whether the *Beacon* indulged in a superabundant quantity of personal hostility towards Mr Stuart, subsequently to his affray with Mr Stevenson, we shall leave the world to determine. But this we will observe, that, from the way in which Mr Stuart conducted himself, he could not have been too severely exposed. The man who acts unmanly—the *patriot* who degrades himself like a traitor—the bullying bravado who is ever the tyrant in a place of safety, must lay his account to meet the hisses of society. The *Beacon* may possibly have o'erstepped the line of propriety on other subjects, and we do not defend it. It may have used a vulgar sentence where the satire of an elegant one might have been felt more poignantly; but in this case its personality was justifiable—its warmth and violence were excusable.

No. VI.

EXTRACTS from the *Answers* for ROBERT ALEXANDER and WILLIAM BORTHWICK, Printers in Glasgow, to the *Condescendence* for JAMES STUART, Esq. in the Action of Damages at his Instance against them.

—“ The respondents generally deny the truth of the libel. They affirm, that the statements in the newspaper complained of are true.”—

—“ The respondents offer to prove, by the evidence of persons of high character and skill in the laws and practice of honour, that the conduct of the pursuer, in regard to the affair with Mr Stevenson, was most ungentlemanly, and deserving of every condemnation.

In respect whereof, &c.

(Signed) For Mr D. M'NEILL,

JOHN HOPE.”

No. VII.

LETTER "To the EDITOR of the SENTINEL, dated 25th January 1822, signed MARK TOD.

(From the Glasgow Sentinel, Wednesday, January 30, 1822.)

SIR,

The Whig Festival and Radical Rally took place here last night, no less a person than "the conquering hero," Sir Ronald Ferguson, M. P. for Kirkaldy, in the chair. They told me, that about 260 gentlemen sat down to dinner, but I presume they were counted near the witching hour of night, when two eyes are as good as four. Amongst the GENTLEMEN, however, I remarked your peculiar friend, the magnanimous Mr James Stuart, but it was not He who gave "The Liberty of the Press." The rest of the GENTLEMEN were, in general, decently clothed; which, when I had time to observe it, dissipated the alarm and suspicion with which I pressed through the crowd, one hand on my watch chain and the other on my pocket, repenting most heartily of my idle curiosity.

The GALLANT GENERAL, as they called him, first, very modestly expressed his inability to perform that duty which he had DELIBERATELY undertaken, or "to do justice to the situation in which he FOUND himself placed;" but this unlucky DISCOVERY did not PUT HIM OUT of the chair, or his speech, for in an EXTEMPORARY oration, he recommended UNION to prevent ruin, but amongst WHOM I could not learn. A very shrewd dark-looking man significantly hinted, that it was a guarded allusion to UNITED SCOTSMEN. Sir Ronald, however, concluded by giving very decently, without any wink or other indication, "The King." After a toast or two, "THE CONQUERING CHAIRMAN" next proceeded to eulogise the public principles and PRIVATE CHARACTER of Mr Fox; the latter, at least, I thought rather ticklish ground, but the Whigs cheered, and all was right, for I am no connoisseur in Whig morality; so "The memory of Charles James Fox" was ordered to be washed down in solemn silence: "Little said soonest mended," thought I, and swallowed my wine. I forgot, however, to mention, that the Conquering General, not finding enough, I fancy, to say for the old dead Whig, jumbled in some devilish severe hits against the present ministers, and told us that HE (the Conqueror) CONDEMNED THEM. So all is over with THEM.

THE GALLANT CONQUEROR next touched up Parliamentary Representation pretty sharply, but made no allusion to KIRKALDY, which you will admit was handsome on his part. He then gave, (and he spoke English like any cockney who has lived in London all his life,) "A fair, free, and FOOL representation in Parliament," and the fiddles struck up "Tullochgorum." THE CONQUERING GENERAL AND GALLANT CHAIRMAN concluded what he FOUND to be his allotted portion of the toasts, by giving the health of one on whom the country should turn THEIR eyes in the hour of DANGER, "Earl Grey;" and the waggish cat-gut tormentors struck up the PRETENDER's song of "Charlie is my Darling." I thought this Noble Lord had become quiet, but after this hint we must keep a sharp eye upon him.

Down sat the REVIEWING GENERAL, and up rose the REVIEWING Lord Rector, Mr Jeffrey, who, in more words than a less glib gentleman could have pressed into the service on such a subject, gave "Sir Ronald Ferguson," and the Band, as previously instructed, played "THE CONQUERING HERO!" The Conquering Hero returned unblushing thanks, and with a BATTLE-dore report, sent back the compliment by proposing the health of "OUR EXCELLENT CROUPIER, Mr Jeffrey." (Great Applause.) The Croupier's croup was in excellent motion, and he was up in a moment, and was all modesty and gratitude.

Then we had, in strange succession, toasts, and speeches, and healths, and memories, too many to remember, till the dull series was relieved by a speech from Mr Cranstoun, which I regret he did not deliver in Greek, as was originally intended. It would have been more appropriate to Grecian liberty than a harangue upon MODERN Greeks in a modern language. I don't think he alluded to the number of SLAVES in ancient Athens, but that perhaps was properly omitted; he concluded, by giving, for a toast, "The re-establishment of the independence of Greece;" this was most heroically received, but passed without a Tune, as the fiddlers had no Greek music furnished;—ONE of them, who is celebrated for the faculty of PUNNING with his fiddlestick, and who slyly coupled Earl Grey with the Pretender, proposed to play the tallow chandler's song, "On melting day when grease is boiling," but it was deemed PERSONAL to several respected Whigs, and an extinguisher was put upon what Tom Moore calls "the LIGHT of the song."

Charles Fox's name and memory is a very convenient excuse for all subjects whatsoever; and as all Whigs are men

of TALENT, we had, as one Doctor Maclagan, who sat near me, very aptly observed, a very copious discharge of oratory. My next neighbour, on the right, whom I suspected to be a weaver, from the manner he expressed his joy, by the alternate fling of either arm, and the successive kicks with either heel, assured me that there were three DOZEN of prime toasts given, and short, and long, five DOZEN of speeches. Many of the toasts you will see in the papers. The army and navy were given, but not another FIGHTING man (unless you will allow the Director of Chancery, my Lord Rosslyn, who was remembered when toasts began to run dry,) until the gallant and "excellent Croupier," whom Lord Byron has celebrated for some bold exploit with Anacreon Moore, (the seconds, no doubt, singing the beautiful air of "Fly not yet,") arose and gave the health of Mr JAMES STUART! Mr James acknowledged, in grateful terms, the honour which he had RECEIVED from such a quarter. So now he has a FEATHER to stick in his cap, to bear the other company.

Imagine my gratification to be seated at so small an expence, at an elegant dinner, amidst a galaxy of talent; and my mouth, scarcely well closed upon my morsel of cheese, again wide expanded for a MORCEAU of eloquence. After all, although I am no judge, I think these MEN OF TALENT very middling sort of bodies. It is not, perhaps, becoming in one such as me to doubt the assurances which we have from THEMSELVES. But if you could convince me that they may possibly be mistaken; and, if thus relieved from the WEIGHT of SUCH authority, I am asked my opinion, why, I must give it honestly, and say that I never was present at such a scene of humbug, fulsome flattery, and foul vituperation, in the whole course of my life. Such an olio of vulgarity and impertinence, with an occasional pepper-corn of genius, I have never before been partaker of. Low must that party be sunk, that could not meet under more respectable auspices than Sir RONALD FERGUSON; and where such a SET were permitted to be prominent. Talents! "behold there arose a talent of LEAD." There are a few men of commonplace genius amongst them; there are also a few smart men of literary SLANG. But duller fellows than the bulk of those who had the effrontery to presume to talk, must alone be sought for amidst the swamps of Old Batavia.

I am, Sir, your obedient humble servant,
MARK TOD.

No. VIII.

THE LATE LIEUTENANT JAMES STUART.

(From the Glasgow Sentinel, Wednesday, Feb. 20, 1822.)

To be dragged into a contest with any individual is an evil ; but the evil is aggravated when the opponent is one not in the most blooming estimation. This we advance as a general principle. We now freely and ingenuously confess our error, in having repeated, in our columns, any thing regarding Mr James Stuart ; for had the gift of prophetic anticipation been ours, and could we have foreseen all that the *gentleman* has done for himself, we should have left his conduct to himself as the more successful satirist.

This *man of letters* has printed a pamphlet, from which any one who will accept of it *gratis* may learn that James Stuart was actually enrolled as a *fighting* man, in the western troop of Fifeshire Yeomanry Cavalry. It appears that this *heroic* Lieutenant, contrary to a Regimental Order, *called out* the troop in which he serves for a drill and a jollification at the Stuart's arms. The Commanding-Officer reported this violation of discipline to the Lord Lieutenant, who directed that he should be reprehended in orders, and these orders to be read at the head of every troop. The Lieutenant rides straight from a drill, writes to the Commanding-Officer, and tells him that his fingers are *cold*, (doubtless to convince him of the *coolness* with which he wrote,) and overwhelms him with compound misfortune ; for he tenders his resignation, and warns him that he will no longer *mount a Trumpeter*. The resignation is *immediately* accepted. So much for the *Lieutenant* himself ; but the *Trumpeter* is not yet disposed of.

The magnanimous yeoman has a threefold defence. The Captain's sickness, his own ignorance, and his exemplary conduct on the day *libelled* ; for he states—and we believe him—that he was the *last* man to *retreat* from the Stuart's arms. Brother M'Culloch is a political economist, and we understand has *two* pupils, and he will bear us out in the assertion that every *thing* will find its own level. To raise the value of any *thing* by any *act* is hopeless. Hence the attempt of Lord Rector Jeffrey to give a *lift* to Mr James Stuart at the Fox dinner, was defeated by the laws of gravity ; he might with equal success have exerted his puissant powers to *lift* the celebrated fat ox of Dunearn.

We noticed Mr James Stuart as an active, everywhere busy, bustling Whig ;—as a *publicised* character, who courted notice. It was under error that we noticed him at all, and we repeat our avowal of regret.

No. IX.

LETTER—SIR ALEXANDER BOSWELL, Bart. to ROBERT MACONCHIE, Esq.

Edinburgh, 24th March 1822.

My Dear Maconochie,

I received your very kind note, but I was so worn out, and just setting out, that I could not come to see you, and it was too late to appoint you to come to me.

I must now address you on a subject of a delicate nature, which I do from a confidence in your friendship.

About ten days ago Mr Stuart of Dunearn went to Glasgow, and, by the instrumentality of certain persons, one formerly a partner in the Clydesdale Journal, (now the Sentinel,) broke open the editor's desk and carried off his papers, and, I understand, amongst others, some squibs in my handwriting. Last night, on my arrival, I received a letter from Lord Rosslyn, that he wished me to appoint an hour as early as possible, that he might make a communication to me ; this, I suppose, is in reference to some of these squibs. I do not know who the offended party may be, but even if it should be Mr James Stuart himself, I shall give him a meeting. In order, however, to obviate many of those circumstances which follow such transactions, I mean that the meeting shall take place on the continent,—say Calais ; and I wish to put your friendship so far to the test, as to request you to be my friend on this occasion. I saw your brother this morning,—and his Lordship seemed to think that you would acquiesce. * If I had deemed it expedient to meet my man here, John Douglas would have gone out with me ; but, if I should be the successful shot, I should not like the after proceedings of our Courts of Law, and therefore wish to pass beyond their jurisdiction. I know nothing of particulars yet, but write in pru-

* It has occurred as proper to be explained here, that, in that part of his speech which refers to this letter, Mr Cockburn did not profess to quote its *words*, but only to give its substance ; and, therefore, that the passage printed in Italics, on p. 41, should not have been marked as a quotation.

dent anticipation, and shall write again so soon as I know them.

I know this is perhaps the greatest favour that can be asked of any man, but, by this arrangement, you will be implicated in less trouble, and you won't mind a trip to France. If my wish is acceded to, I would propose the meeting to take place about fifteen days hence, as I wish to make a slight arrangement respecting my estate, and legalize it by going to kirk and market, so that you may write on receipt of this, and if I must go sooner than I can receive yours, it is only a letter thrown away.

I am,

Dear Maconochie,

Yours very faithfully,

(Signed)

ALEXANDER BOSWELL.

Edinburgh, 7th June 1822.—This is the letter referred to in my deposition of this date. *

(Signed)

J. BALFOUR.

AND. MURRAY, *Comr.*

WM. S. FRASER, *Clerk.*

(Addressed thus on the envelope:)

Edinburgh, March Twenty-four 1822.

Robert Maconochie, Esq.

52, George Street,

Portman Square,

London.

J. P. Grant.

Delivered into my hands by Robert Maconochie, Esq. this fourteenth day of May 1822.

(Signed)

J. BALFOUR.

Edinburgh, 7th June 1822.—This is the cover of the Letter referred to in my deposition of this date.

(Signed)

J. BALFOUR.

AND. MURRAY, *Comr.*

WM. S. FRASER, *Clerk.*

* See Trial, p. 19.

No. X.

EXTRACT LETTER—Mr STUART to JAMES GIBSON,
Esq.

*Prince's Court, London,
Thursday, March 28, half-past 4, P. M.*

My Dear Sir,

I am at the Parliament Street Hotel, but be so good as to address *here*. Let me know what is said, however bad they may represent me. I would, if the worst has happened, avoid wounding the feelings of those that remain, by allusions in the Papers to the cause of the meeting. The trial will develope the truth; but if Sir Alexander recover, as I trust he will, you know the facts; and I trust to you and ——— doing what is fit. I would, however, do nothing while Lord Rosslyn is in Scotland, without his sanction. My debt to him can never be paid.

I hope you remembered to retain Messrs Jeffrey, Moncreiff, Cockburn, and that, if the worst has happened, notice should be given of my determination to stand trial on the *earliest occasion*.—

No. XI.

LETTER Mr STUART to Mr GIBSON.

*Hotel de Londres, Place Vendome,
Paris, April 5, 1822.*

My Dear Sir,

It would only annoy you to tell you how sincerely I am obliged by your kindness in writing to Mr Campbell. I am really so distressed to-day as to be almost incapacitated for any thing, and did not intend to send you a line, but to refer you to ———. But I am so anxious that a trial should be insisted on, as necessary to exculpate me *with all*, that I wish you to consider well what steps ought to be taken. The whole accounts I have seen are erroneous; and even those favourable to me, or intended to be so, give not the half of my case. It is impossible, after the event which has happened,

to write a word on the subject ; and I know of no way of accomplishing an object so necessary for me, but by judicial investigation. I thought a trial would *necessarily* follow, but I learn from Mr Clerk that it is not so. Write to Mr Campbell's care. I have begged to be allowed to return to London ; for it is impossible for me to enjoy anything here, although all are most kind, especially ————, who has made me feel as if I was in my own house.

I am,

My Dear Sir,

Yours, most faithfully,

JA. STUART.

No. XII.

COPY NOTE from Mr STUART to his Excellency the Right Honourable Sir CHARLES STUART, G. C. B. &c. &c.

Mr Stuart presents his compliments to Sir Charles Stuart, and begs leave to acquaint his Excellency, that, with a view to his having more ready communication with his legal friends in Britain, he intends to-morrow to set out for Calais, to the Hotel de Meurice.

If he does not afterwards proceed directly to Britain, he will take the liberty of informing his Excellency where he is to be found while he remains in France. Notice was instantly given in the proper official quarter, on Mr Stuart's leaving Scotland, of his readiness to surrender on the day of trial ; his only object in leaving Britain being, if possible, to avoid the previous confinement.

Mr Stuart embraces this opportunity of offering his grateful acknowledgments to Sir Charles Stuart for having allowed him the honour of an interview.

*Hotel de Londres, Place Vendome,
Wednesday, April 17, 1822.*

No. XIII.

LIST of WITNESSES cited on the part of the Pannel.

- 1 The Right Honourable James Earl of Rosslyn.
- 2 The Honourable William Erskine, Lord Kinnedder.
- 3 Roger Aytoun, Esq. of Muriston, writer to the Signet.
- 4 Richard Mackenzie, Esq. of Dolphington, writer to the Signet.
- 5 Dr James Robertson Barclay of Keavil.
- 6 John Douglas, Esq. of Lockerby, one of the Commissioners of Excise for Scotland.
- 7 Arthur Campbell, Esq. writer to the Signet.
- 8 James Gibson, Esq. of Ingliston, writer to the Signet.
- 9 Mr William Henderson, writer, Hamilton.
- 10 Mr William Spalding, writer, Pitt Street.
- 11 Mr Felix Dougherty, now or lately clerk to the said William Henderson.
- 12 Loudon Robertson, journeyman printer, lately in Glasgow, now in Dundee.
- 13 William Blair, Esq. of Blair, Ayrshire.
- 14 Francis Walker, Esq. of East Fortune, writer to the Signet.
- 15 William Horne, Esq. Sheriff-depute of the shire of Haddington.
- 16 Hay Donaldson, Esq. writer to the Signet.
- 17 Walter Cook, Esq. writer to the Signet.
- 18 Adam Duff, Esq. Sheriff-depute of Edinburghshire.
- 19 Dr Andrew Coventry, Professor of Agriculture in the University of Edinburgh.
- 20 William Gulland, Esq. Strypeside, Fifeshire.
- 21 James Nairne, Esq. of Claremont, writer to the Signet.
- 22 Alexander Hunter, Esq. writer to the Signet.
- 23 Robert Maconochie, Esq. son of the late Lord Meadowbank.
- 24 Robert Liston, Esq. surgeon, George Street, Edinburgh.
- 25 William Smith, servant to James Stuart, Esq. younger of Dunearn.
- 26 Thomas Allan, Esq. banker in Edinburgh.
- 27 Dr George Wood, surgeon in Edinburgh.
- 28 Adam Rolland, Esq. writer to the Signet.
- 29 George Bruce, sheriff-officer in Edinburgh.
- 30 William Ritchie, Esq. solicitor of the Supreme Courts in Edinburgh.

- 31 Charles Dalrymple Gairdner, Esq. manager of Hunter and Company's bank, Kilmarnock.
- 32 David Erskine, Esq. of Cardross.
- 33 Thomas Horsbrugh, Esq. of Lathockar, Fifeshire.
- 34 Walter Fergus, Esq. of Strathore, by Kirkaldy.
- 35 Alexander Ure, writer in Glasgow.
- 36 John Galloway, clerk to the said Alexander Ure.
- 37 William Bankhead, clerk also to the said Alexander Ure.
- 38 John Fisher, extractor in the Burgh Court of Glasgow.
- 39 William Lawrie, writer in Glasgow.
- 40 John Clerk, Esq. of Eldin, Advocate.
- 41 William Murray Borthwick, late printer in Glasgow.
- 42 Alexander M'Grigor, Esq. writer in Glasgow.

Lastly—The whole of the witnesses (except Miss Boswell) named and designed in the list for the Crown, annexed to the indictment, who are not named in this list, and who are here held as repeated.

No. XIV.

INTERLOCUTOR of RELEVANCY, remitting the Libel and the Pannel to an Assize.

[Omitted to be inserted at p. 44.]

The Lord Justice-Clerk and Lords Commissioners of Justiciary, having considered the indictment at the instance of his Majesty's Advocate for his Majesty's interest, against James Stuart, pannel, find the same relevant to infer the pains of law, excepting in so far as it charges the pannel with the unlawful design of challenging others of the lieges to fight a duel or duels; allow the pannel a proof in exculpation and alleviation; and remit him, with the indictment, as found relevant, to the knowledge of an assize.

(Signed) D. BOYLE, I. P. D.

REMARKS ON DUELLING.

REMARKS ON DUELLING;

COMPRISING

OBSERVATIONS

ON THE

ARGUMENTS IN DEFENCE OF THAT PRACTICE.

BY GEORGE BUCHAN, ESQ.

OF KELLOE.

EDINBURGH:

PRINTED FOR WAUGH AND INNES;

CHALMERS AND COLLINS, GLASGOW;

J. HATCHARD AND SON; L. B. SEELEY AND SON; AND
OGLE, DUNCAN AND CO. LONDON.

1823.

ERRATA.

- Page 28. end of second paragraph, no new line
50. to second and fourth lines of Latin quotation, add commas
69. line 1. *for* oversteps *read* overtops
— line 5. *for* Then *read* There
71. line 4. from foot, *for* teaching *read* strengthening
77. line 7. from foot, *after* touch *read* on
79. line 11. *for* an *read* on

REMARKS ON DUELLING.

A FATAL duel which took place in Scotland last year, and which excited a very strong sensation, impressed on several in the circle of my acquaintance, a feeling of the importance of using means to awaken the public mind to a sense of the criminal and pernicious nature of that practice. The duty of offering some suggestions on this deeply interesting question, ~~was~~ devolved on me ; but the fulfilment of this duty was delayed till now, from various causes which prevented an earlier consideration of the subject. I feel, however, the less reason to regret this, as, in the interval, an excellent Treatise on Duelling has been published by the Rev. Mr. Chalmers, of Dunfermline. That little work comprises, in a condensed form, a very valuable collection of materials ; and, from the perspicuity and ability with which the question has been there discussed, it appears to be placed on such strong grounds

as to leave comparatively little to be added. In the few observations, therefore, which I shall now submit, I shall deem it unnecessary to go much into detail, as I could not do so without going over ground already abundantly occupied. I shall pretty much confine myself to such a short statement of the question, as may be sufficient to form the basis of the practical conclusions to which I may be led in the course of the following pages.

All authorities are agreed that duelling is a practice of comparatively modern origin. The Greeks had their pugilistic and gymnastic exercises, and the Romans their combats of gladiators; but though both, especially the latter, were attended at times with great cruelty and bloodshed, such exhibitions, however barbarous in their nature, were looked to as objects of amusement, and were distinct from feelings of personal hostility. Numerous personal combats took place in the times of antiquity between rival generals, or the representatives of rival nations, but such had generally in view the public interests or glory. The recollection of the combat between the Horatii and Curatii, is familiar to every one.—The Alban chief, in proposing it to the Roman king, Tullus Hostilius, gave as his reason his wish, “to hit on some expedient by which it may be determined which nation shall command the other, without much slaughter and effusion of blood on both sides.” Individual combats, on the like principle, are frequently met with in ancient history. But personal warfare,

attended with the usual circumstances of modern duelling, appears to have been unknown among those nations of antiquity that carried the knowledge and practice of war to the highest pitch. When disputes arose at that period, they were settled in a way more consonant to reason. An interesting anecdote is told of two officers in Cæsar's army, (while engaged in the war in Gaul,) who had been at great variance with each other, but whose hostility was only evinced in daring each other to deeds of valour in their country's service. On the occasion of a furious attack by the Gauls, the one challenged his opponent to prove his courage by a bold exploit, and immediately rushed into the thickest danger, in which he would have been overpowered, if his rival had not hastened to his assistance ; and the life of the latter would have been sacrificed in the generous effort, if he whom he was endeavouring to save, had not in his turn come to his relief. They were in this manner both rescued by their joint and magnanimous efforts, and in this way nobly terminated their differences *. The memorable saying of Themistocles to the Spartan commander Euribiades, " Strike, but hear me," much surpasses in elevation of sentiment—in tone of feeling, any thing that modern times can, in like circumstances, exhibit. In unison too with this spirit, may be mentioned the reply of Augustus Cæsar, when challenged by Mark Anthony to settle their differences by personal combat :—" If Anthony is weary of life, tell him there

* Preface to Cockburne's History of Duelling.

are other ways to death besides the point of my sword."

There are few of our modern customs which have been more amply discussed, or of which the origin and progress have been more clearly traced, than that of duelling. That the custom is entirely derived from a barbarous people, and a barbarous state of manners, is a point that admits of no doubt. At that memorable epoch of the decline of the Roman empire, when the bounds that had for a time restrained the rude nations of the north, yielded to the pressure, and when the invading torrent, wave propelling wave, brought calamities and misery, surpassing all that imagination can picture, on the civilized part of the western world, the stately fabric of Roman jurisprudence shared in the general wreck; and the place of defined and well-ordered laws came, where the sword of the conquerors had penetrated, to be supplied by the usages of a people little advanced beyond the savage state. Dr. Robertson observes, (in the History of Charles V.) "If a man were called to fix upon the period in the history of the world, during which the condition of the human race was most calamitous and afflicted, he would, without hesitation, name that which elapsed from the time of Theodosius the Great, to the establishment of the Lombards in Italy*." "Scarce any vestige of the Roman policy, jurisprudence, arts, or literature, remained. New forms of government, new laws, new manners, new dresses, new lan-

* From the year 395 to about 570, a period of about 175 years.

guages, and new names of men and countries, were every where introduced." On the authority of the distinguished author referred to, it may be stated, that before this great invasion took place, "the judicial combat was the most ancient mode of terminating any controversy among the barbarous nations in their original settlements *." This appears to have extended to points of personal character. According to a very ancient law, it is said, "If any man shall say to another these reproachful words, 'You are not a man equal to other men,' or, 'You have not the heart of a man,' and the other shall reply, 'I am a man as good as you,' let them meet in the highway." Dr. Robertson observes, that "it is probable that, when the various tribes which invaded the empire were converted to Christianity, the repugnance of the custom of allowing judicial combats to the precepts of religion, was so glaring, that, for some time, it was abolished, and by degrees several circumstances led them to resume it." Some of those leading circumstances appear very clearly illustrated by the learned author of the *Spirit of Laws*, who mentions the practice of "negative proofs" as a prominent cause. According to this practice, "the person against whom a demand, or accusation, was brought, might clear himself, in most cases, by swearing, in conjunction with a certain number of witnesses, that he had not committed the crime laid to his charge †." The same au-

* Robertson's *Charles V.* vol. i. p. 291.

† *Spirit of Laws*, Book xxviii. chap. 13.

thor observes, “ Gundebuld, king of Burgundy *, was the prince who gave the greatest sanction to the custom of legal duels. The reason he gives for his sanguinary law, is mentioned in his edict. ‘ It is,’ says he, ‘ in order to prevent our subjects from attesting by oath what they are not certain of, nay, what they know to be false.’ Thus, while the clergy declared that an impious law which permitted combats, the Burgundian kings looked upon that as a sacrilegious law which authorized the taking of an oath.”

The ordeals of hot iron, cold water, and boiling water, were scions sprung from the same stem ; but, in conformity with the martial spirit of the times, the trial by duel maintained the ascendancy, while the other forms of ordeal gradually fell into disuse. All partook of the nature of a direct appeal to the Divine Power ; and, wild and extravagant as such appeals were, they were blended with the strongest feelings of religion. It was ignorantly expected that the laws of nature were on such occasions to be suspended, and that the power of the Deity was to be manifestly interposed in the determination of all cases thus solemnly referred to his decision. Every man, according to this system of jurisprudence, became the guardian of his own honour and life ; and, to use again the words of the elegant historian already named, “ the administration of justice, instead of accustoming men to listen to the voice of equity, or to reverence the decisions of law, added

* He reigned in the beginning of the sixth century.

to the ferocity of their manners, and taught them to consider force as the great arbiter of right and wrong."

From the most remote antiquity, the German, and other northern nations, had asserted their right of avenging personal wrongs by force of arms—a practice which, no doubt, paved the way for the system of judicial combats afterwards adopted. The legalized system of such combats must indeed have been harmless compared with the havoc which the practice of petty war continued to spread for centuries through the countries that fell under the power of the northern invaders. This practice was greatly facilitated and extended by the nature of the feudal institutions which followed the overthrow of the Roman power; and, during several ages, the greatest portion of Europe became the scene of such wide-spread disorder and bloodshed, as were scarcely compatible with the existence of any bond of society.

Against this appalling state of things, the authority of the princes, and the denunciations of the church, (which, even in those early ages, had remonstrated from the beginning against every species of personal warfare, as repugnant to the spirit of Christianity *,) were long, and at length not ineffectually exerted. Providence graciously interpos-

* Notwithstanding the general declarations of the church, the clergy oftentimes, from choice or necessity, entered in many ways into the warlike taste and habits of the times. In single combats, though they did not appear personally, they did so by their champions.

ed in raising society from the extreme degree of depression to which it had sunk. From about the twelfth century, a combination of favourable circumstances progressively occurred to produce this result; and a glimmering of light began to break through the thick mental darkness that had then brooded long over the face of Europe. Among the secondary causes, *chivalry* is particularly pointed out by all historians as having had a very prominent effect, and as an institution which, during about four centuries, had a very powerful sway over the manners of those ages. This institution, though often carried to romantic excesses, is derived from a source which commands our respect, the desire of protecting the weak, and of affording succour to the distressed, in the midst of the cruelty and oppression which prevailed through, what have been justly and emphatically termed, the “dark ages.” It was a sort of order that came forth from the midst of chaos. The novice in chivalry, after he had given many satisfactory proofs of valour, was admitted to the honour of knighthood, under the most imposing forms of religious observance; and, according to the mingled notions of that period, was, from the moment of admission, understood to have devoted his services and life to the cause of religion and of gallantry. It had a decisive influence in raising the tone of feeling, in softening the asperities of war, and impressing the mind, not only with the highest ideas of valour, but with the principles of honour, comprehending fidelity to engagements, courtesy, munificence, and, above all, an inviolable regard to

truth. Great, however, as were the advantages of chivalry in its formation, it was accompanied with many drawbacks ; and extending, as it has done, its influence to the present day, it has led to some acknowledged abuses. It is observed by a judicious writer : “ Truly just, humane, courteous, and honourable, was the institution and principle of chivalry ; but in its progress it was liable to many an abuse in the contrary extreme, to that which it was intended to correct. It certainly tended much to soften and polish the manners of those ages which succeeded its introduction ; but in checking ferocity, it gave birth to punctilious refinement, and sowed the first seeds of that fantastic honour, the bitterness of whose fruits are still tasted in the modern duel *.”

Having thus slightly glanced at the system of individual warfare which existed in Europe previously to about the 16th century, I shall just observe, before proceeding to the description of that species of warfare as it now exists, that the trial by judicial combat was finally abolished in France, in the reign of Henry II. in 1547, on the occasion of a single combat between the Lords of Juarnac and Chasteneraye, in which the latter fell. The circumstances of that combat are well told in Cockburne’s History of Duelling†, and afford a lively picture of the feelings of the single combatants of that day. In England, the practice appears to have gradually yielded to the salutary effects of established laws : but so late

* Moore’s Treatise on Duelling.

† P. 114.

as in the reigns of Queen Elizabeth, and Charles I. it had not wholly lost its ground, though nothing more than the observance of the forms then took place*. In regard to the progress of chivalry, it had attained in England, its greatest height in the splendid reign of Edward III. who, with his illustrious son the Black Prince, have been deservedly considered “examples of all that was great in arms, or gallant in courtesy,—the patrons and mirrors of chivalry.” In this reign, “tilts, tournaments, and pageants were constantly exhibited, and with a magnificence formerly unknown†.” Chivalry flourished long in France; but sunk much into disrepute from the period of the fatal accident which befel Henry II. in a tournament held at court, on a festive occasion, when, listening to no refusal, he required Count Montgomery, the captain of his guard, personally to encounter him. It is indeed worthy of notice, that both tournaments, one of the principal accompaniments of chivalry, and judicial combats, may be considered as having received a death-blow in France in the same reign‡.

In entering on the subject of modern duelling, we occupy in a considerable degree, new ground, as the

* In the reign of Edward VI. we find it recorded (Hume’s History, vol. iv.) that the Duke of Northumberland said, that he would, “in his shirt, fight any man,” who might dispute the succession of Lady Jane Grey to the throne.

† History of Modern Europe, vol. ii. p. 182.

‡ Chivalry had been gradually on the decline before the reign of Henry II. Hallam (History of the Middle Ages,) considers the invention of gunpowder as a leading cause of the overthrow of chivalry.

practice now rests on a basis very dissimilar to that which formerly existed. The barbarous nations that overran the Roman Empire were nurtured in a state of war; it was their occupation; feats in arms were their chief boast, and conquest their main pursuit. In the defective state of their laws, an appeal to the sword in every question of property, or of personal injury, became for a time almost inevitable. Calamitous as the practice was in its effects, it was congenial to their whole habits of life; it was countenanced by legal usage, and was confirmed, as they rudely imagined, by the sanction of religion. The Chevalier Bayard, (*chevalier sans reproche et sans peur*,) “took care to have a mass celebrated whenever he went to fight a duel; and himself always knelt down to pray on the spot before he engaged*.” It cannot be necessary to point out particularly the dissimilarity in the present practice, though it has been justly considered as having taken its rise from the habits of chivalry; as having been one of the evils which chivalry entailed on a more enlightened period of the world. In viewing the single combat at present, as a remnant of that venerable institution, it must be looked on as the dregs of a substance of which the essential spirit no longer exists. The transition from the former to the present kind of duelling, was apparently slow and imperceptible in its progress. It has been remarked, that in proportion as judicial combats diminished, the single combat undertaken without

* Moore's Treatise on Duelling.

✓ authority, or in direct defiance of the law, and founded on the selfish passions, desire of revenge, ideal pride, or imaginary insult increased. Hallam, in the *History of the Middle Ages*, states, “that duelling, in the modern sense of the word, exclusive of casual frays, and single combats during war, was unknown before the 16th century*.” All authorities agree in pronouncing a fatal impulse to have been given to this practice, by the challenge which took place between Francis I. of France, and the Emperor Charles V. The historian of Charles V. observes, that this challenge led to “an important change in manners all over Europe.” Upon every “affront or injury which seemed to touch his honour, a gentleman thought himself entitled to draw his sword, and to call on his adversary to make reparation†.” I may here notice this as an instance of the decisive, and often incalculably injurious influence, which the example of persons in authority and station never fails to produce, when happening to accord with a strong bias of the human mind. It would be well that those so circumstanced would weigh the consequences of the high responsibility thus attached to their conduct. I know not any thing in which this more forcibly applies than in the case of duelling.

The rapidity with which modern duelling spread through Europe was lamentably great, though certainly not greater than, according to the habits of

* Vol. iii. p. 339.

† Robertson's *Charles V.* vol. ii. p. 303.

the age in which it began, might have been anticipated. From the death of Henry III. of France, in 1589, to 1607, being the first eighteen years of the reign of Henry IV. it was computed that no fewer than 4000 gentlemen had perished in duels. From the Memoirs of Sully, himself one of the most distinguished officers and eminent statesmen that ever adorned any age or country, it appears that this virulent evil was frequently under the consideration of the government. In 1602, an edict was published, denouncing death against the offence of duelling :—the extent of which punishment, however, Sully, for the reasons he has explained, did not approve ; observing, “ I have too plainly declared my thoughts of this pernicious and savage abuse, to fear the accusation of having endeavoured to tolerate it *.” In 1605, this faithful minister again brought the subject under the view of the King, in a short but interesting memoir, in which an able view is taken of the practice of duelling in the preceding ages, contrasted with what might be then, as it is now called, modern duelling. In referring to the latter, he says, “ there is nothing but monstrous unreasonableness in the practice of those who withdraw slyly into a field to shed the blood of one another, with hands impelled by no better instinct than that which instigates a beast of prey †.” In 1609, an extraor-

* Sully's Memoirs, Book xiii.

† Sully's Memoirs, Book xxii. It may be inferred, from what is here stated, that Sully saw the necessity of increased severity. He urged the king “ to renew the edicts against duels, to aggravate the punishment considerably, and to execute it severely.”

dinary council, called at Fountainebleau for the purpose, the subject was again brought forward. Sully again renewed his powerful arguments; and an edict, involving penalties of increased severity, was again issued. But Henry was, in his own mind, "from a habit contracted by his long wars, by which he saw bloodshed without emotion," partial to duelling; and the facility with which pardons were granted, and the laws evaded, did then, as it must ever do,—when such facility exists, render all prohibitions nugatory. Sully, with a mournful feeling, observes, "the pleasure of the King of Kings, a power far superior, had not reserved the glory of extirpating that abuse for the reign of Henry the Great." In the reign of his son and successor, Louis XIII., duelling still continued, though three edicts were published against it. Though it is there protested, "that no pardon would be granted to the combatants hereafter," and though it does appear that the law was at times enforced with rigour, the necessity of such frequent repetition is a sufficient proof that it had been, on the whole, laxly administered. It was not till the following reign that the great measure of effecting the abolition of duelling was carried into entire effect.

If the subject were to be viewed abstractedly, instead of our being enabled to do so experimentally, there could not, to all appearance, have been a more unpromising period for such an attempt than the reign of Louis XIV. Many of the chivalrous ideas of the preceding ages still remained. France was then eminently warlike and prosperous,—all Europe,

for a time, bending under the weight of her power. Her monarch was proud, ostentatious, thirsting for conquest and fame, and imparting to all around him the like desire of dazzling achievement. It was an era altogether splendid in arts and in arms,—when life had attained a high degree of polish, and remarkable refinement pervaded the intercourse of society*. If there is any truth in the opinion, that duelling is essential to the maintenance of the courtesy of manners, it ought then to have especially appeared—and the practice ought to have continued in full operation. Yet this was the time when the attempt at entire abolition was begun, carried on, and completed, with steadiness and success that must ever reflect honour on that distinguished reign. It was done too, through the medium of the chief officers, who, bred in the school of Turenne and of Condé, were commanding in the noblest army in Europe, and filling the world with the fame of their exploits. Voltaire, in viewing the salutary changes effected by Louis XIV., says, “the abolition of duelling was one of the greatest services which he did to his country†.”

The following extract from Cockburn’s *Treatise on Duelling*‡, gives a concise view of the course fol-

* Objectionable in a high degree, as the concluding part of the remark is, we may here apply the words of a late eminent writer, in saying, that there then existed “that sensibility of principle,—that chastity of honour, which felt a stain like a wound,—which inspired courage, whilst it mitigated ferocity,—which ennobled whatever it touched,—and under which, vice itself lost half its evil, by losing all its grossness.”—*Burke’s Reflections on the French Revolution*.

† View of the Interior Government of France under Louis XIV.

‡ P. 348.

lowed on an occasion interesting to every civilized country :—" This wicked custom of duels, which first began in France, was never effectually stopped there, till the reign of the late Louis XIV. In the third year of his reign, viz. March 15, 1646, a very rigorous edict was published, and was better observed than those before : And the authority of it was supported by a generous and voluntary association of all in public office, and of the chief of the nobility and gentry in the kingdom, who, by their subscriptions, obliged themselves never either to give or receive challenges. From this time duels began to be less frequent, and were at last laid aside after that king assumed the government into his own hands ; for he pardoned none, of any rank or quality, but executed justice impartially upon all. And that there might be no pretence for private revenge, a Court of Honour was erected, for considering provocations of all kinds, and of all degrees, and for judging a proper and reasonable satisfaction for them. And because some thought to elude the law against duels, under the pretence of an accidental rencounter, this was also so obviated, that even that pretence could not save one. By this means, duels were at last entirely suppressed in France, which was a great act, worthy of true praise, and is ever to be remembered to that king's glory. If all the other parts of his life and reign had been answerable, none ever deserved better the title of *Le Grand* ; and he might have been proposed justly as a modern pattern for kings and princes. But, alas ! the vices of kings are imitated more commonly than their virtues."

It appears that this question was more than once under the view of the government of Louis XIV. and that it was not till the year 1679, that a royal edict was published, founded on regulations submitted by the French Marshals, which rendered the abolition conclusive. It was there declared, that “the challengers, and challenged (if they accept,) are liable to heavy fines, imprisonments, and confiscations, even if they proceed not to the combat ; and also seconds, the same. But if fighting follows, the combatants are both to be put to death, without pardon,—all their estates, real and personal, to be forfeited, and their bodies not to be allowed Christian burial. If one fall in the combat, the process against his body and memory to be the same.”—(*Moore's Treatise.*)

It is observed by the same writer, that “two points seem more especially to have contributed to give stability to this edict, viz. the solemn agreement entered into by so many of the principal nobility and gentry of the kingdom, that they would never fight a duel upon any pretence whatever ; and the firmness of the king, in refusing all solicitations in behalf of offenders against it.”

Lewis XIV. in his last will, recommended the edict against duels to the care of his successor ; but, from the lax hands into which the government then fell, the salutary provisions of the edict apparently ceased to be any longer vigilantly administered.

Having stated these observations, as to the progress of duelling in France, we shall take a short view of what occurred about the same period in

England. It is deserving of attention, that not long after the illustrious Sully had been using his strenuous efforts to put an end to the practice in France, the ornament of English literature, Lord Bacon, also directed his great talents to the same end. All his influence as Attorney General, appears to have been repeatedly exerted for this purpose ; but the efforts of this great man experienced the like result as those of his cotemporary Sully, and from the like cause, —the facility of his royal master in granting pardons. Nothing could be more dissimilar than the characters of Henry IV. and James I. ; but in this respect, the conduct of both tended to the same point.

The former acted under the influence of mistaken courage and long habit ; the latter under the influence of weakness and an incapability of adhering to his resolutions ; and in this way both gave a sanction to duelling, contrary to the efforts and admonitions of their wise ministers.

From the state of the country, and of parties, duelling is described to have been little prevalent in the reign of Charles I.

It had probably revived in the time of Cromwell, as an ordinance was published by him in 1654, enacting severe penalties against both principals and seconds connected with duels. “ Fighting a duel, where death should ensue, was to be adjudged murder.”

On the restoration of Charles II. duelling, fostered by the general licentiousness of the times, was carried to a great extent. A royal proclamation was published in 1679, containing vehement declarations

against the practice. But that was a reign out of which no good thing could come ; and the judicious Moore observes, “ duelling maintained its usual ground, because neither in Charles’, nor any of his successors’ reigns, has there been an *enforcement* of the laws against this bloody practice.” An atrocious duel, which took place between Duke Hamilton and Lord Mohun, in which both fell, probably led to a recommendation of the subject to the attention of Parliament, in a speech from Queen Anne in 1713. A bill was in consequence brought into Parliament, to “ prevent the impious practice of duelling ;” but it was not afterwards proceeded in. This proposed bill, no doubt contemplated, and was intended to ensure, a more strict enforcement of the previous prohibitions.

The laws as established in this kingdom with respect to duelling, entirely accord with the public declarations referred to. An excellent summary has been given of those laws, and of the ablest commentaries, in Mr. Chalmers’ Treatise, to which I alluded ; and as it appears material to a correct understanding of the question to bring together those enactments in a connected form, I may be permitted to subjoin the following extract from that very interesting publication. The extract is somewhat longer than is quite consistent with the limited nature of the present remarks ; but I have felt that I could not convey the same information in any other way so clear and satisfactory as has been there done.

“ I shall now proceed to state the law regarding duelling, and to make such observations as the con-

sideration of it may suggest. That the law, both of Scotland and England, prohibits this practice, under the highest penalties, is beyond a doubt. Its enactments are very clearly and fully related by Erskine in his *Institutes*, Book IV. Tit. 4. The first statute making the single combat a crime is 1600, c. 12.; in which may be perceived the last remains of our ancient law, admitting the singular combat or duel, as a method of proof, both in civil actions and criminal prosecutions; for in that statute a power is reserved to the sovereign to authorise duels,—which power was, without question, intended to be exercised in those doubtful accusations, where it was thought that Providence never failed to interpose in bringing the truth to light, and vindicating innocence. The crime of duelling is, by this statute, made to consist in the actual fighting with mortal weapons, though no slaughter should ensue; for where the fighting is attended with slaughter, the crime is punished capitally as murder, without borrowing aid from this statute. The duel must be fought in consequence of a previous challenge, either written or verbal, given and accepted, by which the preconceived purpose in both parties to fight may appear, otherwise the crime falls under the character of a *rencontre*, which is not punished capitally, without an actual slaughter. Both he who challenges, and he who is challenged to fight, are to suffer death by the statute; but the provoker is to suffer a more ignominious one, at the pleasure of the king. It is no good defence against a libel upon this act, that the pannel, though he went to

the place appointed, refused to fight till he was attacked ; for his going thither is to be considered as an acceptance of the challenge, and his refusing to fight only as a colour or pretext for a defence in the case of a trial. This act is ratified by 1696, c. 35, which provides farther, that what person soever, principal or second, or other interposed person, gives a challenge to fight a duel or single combat, or who-soever accepts one, or engages therein, shall be punished with banishment, and escheat of moveables, though there should be no fighting in consequence of the challenge. Every person falls within this act, who carries a challenge, either by a letter or verbal message : And such as are barely present at a duel, appear to be comprehended under it, if their presence has not been accidental ;—for those who countenance the crime, though it should be merely by their presence, may be said to be in some degree engaged therein, in the terms of the statute.”

“ Sir George Mackenzie, an old writer, delivers an equally decided opinion of the unlawfulness of duels, in an article expressly written on the subject. He begins his dissertation with these emphatic words :—‘ Duels are but illustrious and honourable murders ; and therefore, I have subjoined this title to the title of homicide. This is that imperious crime, which triumphs over both public revenge and private virtue, and tramples proudly upon both the law of the nation and the life of our enemy. Courage thinks law here to be but pedantry ; and honour persuades men, that obedience here is cowardliness.’ Towards the close of the article, he shews

that duels are in themselves unlawful by all law, from a variety of reasons.—*Mackenzie's Works, Edin. 1722, vol. ii. p. 106.*

“ Mr. Baron Hume, who is reckoned high authority in matters of law, gives a similar testimony to the preceding writers on this subject. ‘ Where a duel takes place,’ says he, ‘ upon a challenge, and is followed with the death of one of the parties, this, according to the law of Scotland, is murder in the survivor, *how fair and equal soever the manner of conducting the combat.* But the better to repress such irregularities, to which the fervent temper of the Scots so strongly disposed them, the legislature, by the statute 1600, c. 12, raised the bare act of engaging in a duel, to the same rank of a capital crime as the actual slaughter ; without distinguishing whether any of the parties did or did not suffer any wound or material harm on the occasion. To complete the restraint, it was, by statute 1696, c. 35, made punishable with banishment, and escheat of moveables, to be concerned in the giving, sending, or accepting of a challenge, even though no combat should ensue.

“ He then states what is to be held a challenge, and quotes some cases in illustration.—(*Hume on Crimes, Edin. 1779. vol. ii. ch. 17. sect. 4.*)

“ He adds, however, in a note in his supplementary volume, ‘ Though such is the understood law on the subject of duel, and exemplified in the instances mentioned in the text, it has so happened, that on several late occasions of trial for homicide upon challenges to fight, the pannels have had verdicts of

acquittal. This was the issue in the case of George Ray, 18th June, 1798—of M'Donnell, 6th August, 1798—and of Alexander Cahill, 2d and 3d January, 1811.'—(*Supplement*, No. 87.)

“ The following are decisive authorities as to the law of England: Blackstone having defined ‘ malice prepense, *malitia præcogitata*,’ (the essential ingredient of the crime of murder,) to be ‘ not so properly spite or malevolence to the deceased in particular, as any evil design in general;’ and ‘ express malice, to be, when one, with a sedate, deliberate mind, and formed design, doth kill another; which formed design is evidenced by external circumstances, discovering the inward intention, such as lying in wait, antecedent menaces, former grudges, and *concerted* schemes to do him some bodily harm;’ adds, with the view of leaving no doubt, that killing in duel comes within the legal description of murder: ‘ This takes in the case of deliberate *duelling*, where both parties meet avowedly with an intent to murder; thinking it their duty, as gentlemen, and claiming it as their right, to wanton with their own lives and those of their fellow-creatures, without any warrant or authority from any power, either divine or human, but in direct contradiction to the laws of God and man; and therefore, the law has justly fixed the crime and punishment of murder on them, and on their seconds also.’—*Blackstone*, vol. iv. p. 198, 199.

“ Judge Foster says, ‘ Deliberate duelling, if death ensueth, is, in the eye of the law, murder. For duels are generally founded in deep revenge;

and though a person should be drawn into a duel, not upon a motive so criminal, but merely upon the punctilio of what the *swordsmen falsely call honour*, that will not excuse. For he that deliberately seeketh the blood of another upon a private quarrel, acteth in defiance of all law, human and divine, whatever his motive may be.—(*Foster's Crown Law, Disc. II. cap. 5.*)

“ These opinions are confirmed by Sir Edward Coke, an English lawyer of great eminence, who says, in his *Institutes*, that ‘ single combat between any of the king’s subjects, is strictly prohibited by the laws of this realm.’ And on this principle, ‘ that in states governed by law, no man, in consequence of any injury whatever, ought to indulge the principle of private revenge ;’ for revenge, he declares, belongs to the magistrate, who is God’s lieutenant. ‘ That it is also against the express law of nature, and of nations, for a man to be ‘ *judex in propria persona*,’ judge in his own cause, ‘ especially in *duello*,’ in a single combat, ‘ in which injury, malice, and revenge, may unfortunately govern and control the judgment.’

“ He then lays down various maxims of English jurisprudence on this important subject.

1. “ That the honour and estimation of individuals, in a personal dispute, may be more justly revenged and repaired by the magistrate in public, than by themselves in private.”

2. “ That there is nothing honourable which is contradictory to the law of our country, or to the acknowledged laws of nature and of nations.”

3. "That whatever is against the laws of God, is impious and dishonourable."

4. "That the imminent danger of the parties seeking private revenge, proves its folly and evil tendency."

5. "That it is impiously hostile to the origin and nature of man, and to the laws of God; as man is said to be made after the image of God. "Whoso sheddeth man's blood, by man shall his blood be shed, as in the image of God made he man." God, who gives life, is the sole Lord of life; nor can any justly take it away, except God, or a person possessing his authority as a judge."

"He further observes, that even in those cases in which no fatal effect takes place, and in which no blood is drawn, yet, that the very combat for revenge is considered by the English law in the light of an affray, a breach of the king's peace, an affright and terror to the king's subjects, and is punishable by fine and imprisonment, and the finding of sureties for good behaviour. It is also an offence, and punishable by law, he adds, even previous to combat, by word, writing, or message, to challenge another, as this offence is considered to be 'contra pacem, coronam, et dignitatem.'—(*Coke's Institutes*, part iii. chap. 72.)

"Mr. Justice Grose, in delivering the sentence of the Court of King's Bench, in the case of the King against Lieutenant Rice, for challenging his superior officer, delivered himself in the following strong terms:—

“ This offence, in modern times, is so frequent, that it is become alarming to the public, and induces to suspect, that men either are not aware of the consequences that the offence may lead to, or are become insensible to the mischiefs of them. That fighting a duel is a grievous breach of the peace, is undoubted; and that it ought to be so considered, is as clear, inasmuch as it may lead to one of the worst of crimes—*murder*;—the murder of one probably, and possibly of more. I lay stress upon the word *murder*, because I fear some are ignorant, and others will perversely not understand, that to kill a man in a duel amounts to the crime of deliberate murder, whether he that gave, or he that accepted the challenge, fall. To every lawyer this is a proposition perfectly clear; but that others, who are not of the profession, may as perfectly be assured of it, I will read only a passage or two from the most able writers upon the subject, to shew, that it is a doctrine not of modern date, but coeval with the first institution of our laws. By *Sir Matthew Hale*, as correct, as learned, and as humane a judge as ever graced a bench of justice, we find it laid down, that if *A.* challenge *C.* to meet in the field to fight, and *C.* decline it *as much as he can*, but is threatened by *A.* to be *posted for a coward* if he meet not; and thereupon *A.*, and *B. his second*, and *C.*, and *D. his second*, meet and fight, and *C. kill A.*, this is murder in *C.*, and *D. his second*; and so ruled in *Taverner’s* case; in which case, tried before the Court of King’s Bench in this place, it appeared, that the deceased

was the *challenger*, and that the prisoner accepted the challenge, as the case terms it, *upon very forcible provocation*. Sir Edward Coke, the Lord Chief-Justice, laid down the law thus : ‘ This is a *plain* case, and *without any question* ; if one kill another in fight, upon the provocation of *him that is killed*, this is murder.’ Of the same opinion were the rest of the Court. In this case, it is to be observed, that, the second, one *Thomas Musgrave*, as well as the principal, was convicted, and the other second was outlawed. This precedent may well deter others from taking upon them so illegal and improper an office. And such has been the law recognized at different times, down to the present moment, as we may observe, by what is laid down by a very learned and able judge of the last reign ; his words are, ‘ That in all possible cases, deliberate homicide, upon a principal of revenge, is murder ; *for no man, under the protection of the law, is to be the avenger of his own wrongs*. If they are of such a nature, for which the laws of society will give an adequate remedy, thither he ought to resort ; but be they of what nature soever, he ought to bear his lot with patience, and remember, that vengeance belongeth only to the Most High.”—(*Samuel on the British Army*, p. 411.)

“ I shall quote only one other authority illustrative of the opinions of English lawyers. It is that of Mr. Justice Buller, who, in his charge to the Jury, in the trial of the Rev. Mr. Allen, for the ‘ wilful murder’ of Lloyd Dulany, Esquire, in July 6, 1782, observed, that ‘ as to law, there is not, nor

ever was a doubt, that when two persons meet together deliberately to fight a duel, and one of them is killed, the other is guilty of ‘murder, and his second likewise;’—and ‘that a mistaken point of honour was not to bias the judges and the jury in such a case*.’”—(*Gilchrist on Duels.*)

It is a very gratifying thing, in tracing the progress of society, to see the influence which Christianity has gradually diffused, wherever the beams of the gospel have been at all imparted. The reviving energies of light and heat return to reanimate and call forth the dormant powers of nature, after the long and dark season of winter, while the eye marks not the revolution of the heavenly bodies by which the marvellous change is produced.

And we not unfrequently pass from a tainted, polluted, atmosphere,

“Where nature sickens, and each gale is death,”

to that pure air where “health flows copious from a thousand springs,” without our much adverting to, or knowing the causes that have operated the transition. So in regard to the general tone and manners of modern society, Christianity has been producing results of the most decisive kind, while we who have been enjoying the advantages of those results, have been often negligent as to the source from whence they came. Christianity has been gradually and imperceptibly opening new channels of feeling and action, in which the human mind has

* Vide Mr. Chalmers’ Treatise, p. 124.

been by education and habit directed, while individuals themselves have been often little conscious of any such influence, and have been oftentimes strenuous in opposing leading truths to whose sway they were rendering in fact an unwilling homage, in conforming to that general, that improved standard of life, which Christianity has so directly tended to establish. One of the first fruits of the conversion of Constantine to Christianity, was the abolition of the combats of gladiators. The law he passed, says, “cruel and bloody shows in time of peace, do not please, neither are suitable; wherefore we henceforth forbid gladiators altogether.” This, however, did not immediately terminate those cruel sports; but, under the genial influence of Christianity, the work of abolition went gradually on, and they finally ceased in the reign of Honorius, in the beginning of the 5th century*.

That the progressive alteration which took place in the opinion of the modern governments of Europe, on the subject of duels, may be ascribed in a considerable degree to the same salutary cause, cannot be well doubted. At the same time, one is struck with the fact, that the various edicts and prohibitions of the crime, are more founded apparently on the ground of its temporal injuries to society, than on that which constitutes the chief malignity of the

* It is remarkable that the abolition appears to have been ultimately owing to the generous boldness of a Monk, of the name of Telemachus, who rushed into the arena to separate gladiators when about to engage. He fell a sacrifice in the cause; but the heroism of his conduct awakened the people to a sense of the magnitude of the evil that he was thus withstanding by the sacrifice of his life.

offence, its being a direct and manifest violation of the laws of heaven. The former ground is strong—conclusively strong.—The gross absurdity of the practice*,—its barbarous cruelty,—its disastrous effects,—in parents bereaved of their sons, as Lord Bacon expresses it, “*auroræ filii*, sons of the morning,”—wives of their husbands,—children of their parents, friends and kindred deprived of the objects of their love and regard,—whole families plunged into mourning, and perhaps want, from a senseless regard to a point of honour, which no one can clearly define,—from slavery to fashion, compared with whose unceasing changes the wind may be almost said to have permanency, and a foundation of sound durability†. The ground here mentioned, is indeed

* It is *absurd*, because, by this means, a person who has sustained an injury, is called upon to sustain the farther injury of being compelled wantonly to expose his own life,—in that way incurring the guilt of suicide ; or of taking the life of his antagonist,—in that way incurring the guilt of murder. It is *absurd*, because it attaches the penalty of death to an offence scarcely worth the name,—a slighting look,—a hasty expression,—or to differences, in the compromise of which there ought rarely to be much difficulty, and in which there would be no difficulty, if proper means were exerted under public authority. The laws of Draco were not more deeply stained with blood. The practice is *absurd*, because it leads to no conclusion as to the merits of the question at issue. Our ancestors, in their judicial combats, appealed to the decision of heaven to determine the side of right or wrong. With much superstition, there was mixed in this a sort of plausibility of reason ; but in behalf of modern duels there is nothing of the kind to urge. It is further *absurd*, because the combatants are not unfrequently placed on a very unequal footing ;—superiority of strength or skill, being often found on the side of overbearing insolence, or ruthless violence.

† The remarks on Duelling, contained in Paley’s Moral Philosophy, are certainly inferior in most respects to what might be expected from

abundantly strong; but how infinitely is it enlarged, if we extend our view to duelling as an open infringement of the divine laws,—an act of undisguised rebellion against the majesty of heaven,—an avowed preference of the false and wretched applause of our fellow-mortals, to the favour of him who created us,—of him in whom “we live and move, and have our being;” and this, at the very moment when our souls are ready to rush into his hallowed presence, and when the thunderbolt of his

a writer of his eminence. But his portrait, of what is styled the “Law of Honour,” is so well and truly drawn, that I am induced to insert it here. One would suppose that the encouragement is not great, to become the servile subjects of such a law.

“The law of honour, is a system of rules constructed by people of fashion, and calculated to facilitate their intercourse with one another: and for no other purpose.—Consequently, nothing is adverted to by the law of honour, but what tends to incommode this intercourse.

“Hence this law only prescribes and regulates the duties betwixt equals, omitting such as relate to the Supreme Being, as well as those which we owe to our inferiors.

“For which reason, profaneness, neglect of public worship, or private devotion, cruelty to servants, rigorous treatment of tenants or other dependents, want of charity to the poor, injuries done to tradesmen by insolvency or delay of payment, with numberless examples of the same kind, are accounted no breaches of honour; because a man is not a less agreeable companion for these vices, nor the worse to deal with, in those concerns which are usually transacted between one gentleman and another.

“Again, the law of honour, being constituted by men occupied in the pursuit of pleasure, and for the mutual convenience of such men, will be found, as might be expected from the character and design of the law-makers, to be in most instances favourable to the licentious indulgence of the natural passions.

“Thus it allows of fornication, adultery, drunkenness, prodigality, duelling, and of revenge in the extreme,—and lays no stress upon the virtues opposite to these.”

wrath is ready to be hurled against the daring violator of his commandments. One of the inspired writers emphatically says, "it is a fearful thing to fall into the hands of the living God."

The declarations of the divine law seem so very clear, that nothing apparently but wilful misunderstanding, or strange delusion, can blind us regarding them. To any one who truly receives the Scriptures as the "oracles of the living God," the obligations on this point must be felt as wholly irresistible. It may be right, therefore, that I should bring to view some of the many passages on the subject. The first general law regarding murder, was given to Noah immediately after the flood, Gen. ix. 5, 6. "Surely the blood of your lives will I require: at the hand of every beast will I require it; and at the hand of man: at the hand of every man's brother will I require the life of man. Whoso sheddeth man's blood, by man shall his blood be shed: for in the image of God made he man." The second general law is included in the ten commandments, delivered to Moses in the midst of the thunders of Sinai,—an impressive emblem of the penalties attached to their violation, Exod. xx. 13. "*Thou shalt not kill.*" These are followed by more detailed ordinances founded on the first laws.

Exod. xxi. 12. "He that smiteth a man, so that he die, shall be surely put to death."

Numb. xxxv. 16. "If he smite him with an instrument of iron, so that he die, he is a murderer. The murderer shall surely be put to death."

17. " And if he smite him with throwing a stone, (wherewith he may die,) and he die, he is a murderer. The murderer shall surely be put to death.

18. " Or, if he smite him with an hand-weapon of wood, (wherewith he may die,) and he die, he is a murderer. The murderer shall surely be put to death.

19. " The revenger of blood himself shall slay the murderer ; when he meeteth him, he shall slay him.

20. " But if he thrust him of hatred, or hurl at him by laying of wait that he die.

21. " Or in enmity smite him with his hand that he die, he that smote him shall surely be put to death, for he is a murderer. The revenger of blood shall slay the murderer when he meeteth him."

30. " Whoso killeth any person, the murderer shall be put to death by the mouth of witnesses ; but one witness shall not testify against any person, to cause him to die.

31. " Moreover, ye shall take no satisfaction for the life of a murderer which is guilty of death, but he shall be surely put to death."

33. " So ye shall not pollute the land wherein ye are, for blood it defileth the land : and the land cannot be cleansed of the blood that is shed therein but by the blood of him that shed it."

Deut. xix. 10. " That innocent blood be not shed in thy land, which the Lord thy God giveth thee for an inheritance, and so blood be upon thee *."

* In reference to the cities of refuge appointed by the Mosaic law; it is observed by a writer of great merit :—" The city of refuge ; nay,

The ritual and ceremonial part of the Mosaic dispensation was superseded by the dispensation of the Gospel; but the spiritual authority of the commandments given to Moses, remains equally binding in every Christian country, as it was on the Jewish people. Our Saviour expressly declares, (Matt. v. 17, 18.) “ Think not that I am come to destroy the law or the prophets ; I am not come to destroy, but to fulfil. For, verily, I say unto you, Till heaven and earth pass away, one jot or one tittle shall in no wise pass from the law, till all be fulfilled.” Our Saviour appears to have had it particularly in view

the altar itself, a strong tower of defence to every other criminal, has lost its hallowed character at the approach of a murderer, and emptied him out of its sacred recesses into the hands of the avenger of blood. God hath said, *a man that doeth violence to the blood of any person, he shall flee to the pit ; let no man stay him.* In solemn response the world has cried, Amen. But all these sentiments—all these rights—all the obligations of this law, the duellist has violated. Nay, he has violated them in cold blood ; with the deliberation of system ; in the season of serenity ; in the tranquillity of the closet,” &c.—*Dwight's Theology*, 4to. vol. ii. p. 216.

It is observed by another writer of deservedly high name, in regard to the commandment given to Noah :—“ It is a subject for serious inquiry to all who are cordially affected to the welfare of these nations, how far it can be justified before God, and how far national guilt is contracted, when so many are suffered to elude justice, who commit wilful deliberate murder in duels, whilst numbers of thieves are put to death—a punishment which God never commanded—perhaps does not approve. Though the moral image of God, in which man was at first created, is defaced, yet the natural image remains ; and it is the most daring act of rebellion against God, to assault his visible image on earth, and destroy the life which he communicated. It is observable, that the reason given for the punishment of the murderer with death, is taken from the affront which he offers to God, not from the injury which he does to man.”—*Scott's Commentary*, Gen. chap. ix.

to give a more enlarged—a more spiritual sense—to the divine laws, than was entertained by the Jews of that day. He says, “Ye have heard that it was said by them of old time, Thou shalt not kill; and whosoever shall kill, shall be in danger of the judgment; but I say unto you, that whosoever is angry with his brother without a cause, shall be in danger of the judgment; and whosoever shall say to his brother, *Raca*, shall be in danger of the council: but whosoever shall say, Thou fool, shall be in danger of hell-fire*.” The Scriptures, on all occasions, in the New as well as Old Testament, denounce the severest vengeance against the crime of murder. “Now the works of the flesh are manifest, which are these, adultery, fornication, uncleanness, hatred, variance, emulations, wrath, strife, envyings, *murders*, drunkenness, &c. and such like; of the which, I tell you before, as I have also told you in time past, that they which do such things shall not inherit the kingdom of God†.” “But the fearful, (that is, those who timidly shrink from a profession of the gospel,) and unbelieving, and the abominable, and *murderers*, and whoremongers, and sorcerers, and idolaters, and all liars, shall have their part in the lake which burneth with fire and brimstone; which is the second death‡.” The Scriptures also enjoin the most ample forgiveness of injuries; and

* *Vide* Dr. Doddridge’s Expositor, (vol. i. p. 196,) and other Commentaries, for a particular explanation of those expressions. *Raca* is stated to mean “*worthless empty fellow.*” *Thou fool*; that is, “*thou graceless, wicked villain.*”

† Gal. v. 19.

‡ Rev. xxi. 8.

we are again and again warned, that if we do not forgive others their wrongs against us, we have no hope of forgiveness from God. “If ye forgive men their trespasses, your heavenly Father will also forgive you; but if ye forgive not men their trespasses, neither will your Father forgive your trespasses.” “And his lord was wroth, and delivered him to the tormentors, till he should pay all that was due unto him: so likewise shall my heavenly Father do also unto you, if ye, from your hearts, forgive not every one his brother their trespasses.” “Put on bowels of mercy, kindness, humbleness of mind, meekness, long-suffering; forbearing one another, forgiving one another; if any man have a quarrel against any, even as Christ forgave you, so also do ye.” “Be patient towards all men: see that none render evil for evil unto any man.” “Avenge not yourselves, but rather give place unto wrath: for it is written, Vengeance is mine; I will repay, saith the Lord. Therefore, if thine enemy hunger, feed him; if he thirst, give him drink; for, in so doing, thou shalt heap coals of fire on his head. Be not overcome of evil, but overcome evil with good*.”

No language can be more plain than the above. No intimation more clearly given of the Divine will, with regard to murder, in any supposeable shape, and all the propensities of the heart, from which the crime emanates. It might be reasonably supposed, that, with such direct, such fearful denunciations of the divine vengeance in view, few would be found

* Matt. vi. Matt. xviii. Col. iii. 1 Thess. v. Rom. xii.

so unthinking, or so daring as to bid it defiance. The laws of God and of man have united their clearest dictates on the subject; and with such luminaries in sight, with such a "pillar of cloud by day, and pillar of fire by night," it might have been thought that few would have wandered, notwithstanding all the perversity of the human mind, and the depravity of the human heart. But,

"Fools do rush, where angels dare not tread."

Almost daily experience suffices to shew how wide of the truth would be any supposition of the above kind; and how constantly, in the modern practice of duelling, the great mass of society do practically set at nought, (or are ready at any time to do so,) and trample on the laws of God and man; and, instead of yielding to them that reverence which it is their highest duty and their highest interest to yield, how ready most are to transfer a willing homage to a false system of honour,—in its nature at utter variance with every precept of the Gospel*.

* Defective and objectionable as Mandeville's writings are, his delineation on this point is correct, (*Fable of the Bees*),—"The only thing of weight that can be said against modern honour is, that it is directly opposite to religion. The one bids you bear injuries with patience: the other tells you, if you do not resent them you are not fit to live. Religion commands you to leave all revenge to God: honour bids you trust your revenge to nobody but yourself, even where the law would do it for you. Religion plainly forbids murder: honour openly justifies it. Religion bids you not shed blood upon any account whatever: honour bids you fight for the least trifle. Religion is built on humility, and honour upon pride:—How to reconcile them, must be left to wiser heads than mine."

Few, indeed, there are, who have resolution not thus “to bow the knee to Baal*.” This presents a strange anomaly in the history of modern society. It may be hoped, that so detestable a remnant of barbarism as duelling is, will not continue to hold its ground in the present enlightened age; and future generations will perhaps scarcely credit, that it had been so long tolerated in a country professing to be guided by the precepts of Christianity, and in which the Gospel light has been so greatly diffused as it has been in our highly favoured land. At the same time, the present occasion may not be unsuitable for offering some suggestions as to the causes which seem to give at present strength to the practice; and, in doing this, I shall be unavoidably led to a reference to some of the prominent arguments in its defence.

It appears, that for this purpose, I cannot follow a better course, than in referring to the very interesting, and I may say memorable trial, which took place last summer, on the occasion of the death of Sir Alexander Boswell in a duel. I do so, as the event is the most recent of any of the kind that has unhappily occurred,—as the proceedings of the trial have been published with particular care,—and as

* We justly reprobated the conduct of France, who, during the mania of the late Revolution, established the idolatrous worship of the “Goddess of Reason.” The government of France had, at that wretched period, renounced avowedly Christianity, which professedly we have not done; but do those who give the preference above referred to, differ more in their idolatry, from that of France, than in name? “Thou shalt have no other gods before me,” is the first of all the commandments.

the case is peculiarly strong, from the very aggravated provocation which had been given: so that, if duelling cannot be justified in such circumstances, we may safely say that it can be justified in no circumstances whatever. I think, too, the opportunity favourable, of farther investigating the subject, from the eminent talents of the leading counsel who conducted the defence, and who did so with that unrivalled skill, and eloquence—which stamp him as one of the first pleaders of his day. He, no doubt, on that occasion, put forth all his powers, and embodied, in strong array, all the most forcible arguments that the case could admit of; and we have, therefore, I think, pretty fairly before us, in this admirable defence, most of the strongest reasons that can be urged in favour of duelling, clearly and eloquently stated. I have this feeling on the subject, as I have no wish to meet the question in a side-wind, or evasive way, my object being to elicit truth. I may truly say, that I have not been a hasty, or very willing convert to the opinion I now entertain, as to the utter unlawfulness and criminality of duelling. Influenced by early impressions, and the usual prejudices, so long as I saw any plausible ground for maintaining a contrary opinion, I was unwilling to quit that ground. But as the evidence against the practice is, according to the best judgment I have been able to exercise, altogether irresistible, I should hold myself basely criminal if I withstood such conviction,—basely criminal if I hesitated to avow it.

The following appears to be an outline of the arguments, with regard to the general question of duelling, in the defence referred to:—That it is the motive and intention, which constitutes the essence of all crimes. That the evils which duelling tends to prevent, are too apt to escape our consideration. That bad as the remedy is, it is a corrective of greater immoralities, and a preventive of greater crimes—particularly assassination. That it tends to refinement of manners, courage, and manliness of character. That the practice has been vindicated by high authorities,—Dr. Johnson, Dr. Ferguson, and Lord Kames. That duelling is not to be viewed as unqualified murder. That a continued series of the verdicts of juries, given under the sanction of the courts of law, constitute that practical law on which the subjects of the land are entitled to rely. That it is desirable that the antiquated severity of some of our laws should be in this way tempered. The point of *malicious* killing is again reverted to as essential to establish the crime of murder. The severity of the statutory law against duelling, connected with the manners of the period of its enactment, and the prevalence of the practice in the 16th and 17th centuries, is pointed out. Cases are stated, where one may lawfully take the life of another. The circumstance of one vindicating his character, when placed in the dilemma of either shooting his opponent, or living an outcast from society, is considered stronger than any of the supposed cases, where killing another is lawful. Though a great

proportion of duels in the present day are considered to proceed on justifiable grounds, the ordeal of a trial is deemed essential. The small number who fell in duels in the late king's reign, compared with what fell in France in the reign of Henry IV. Several cases of duelling are quoted, to elucidate the principle of the decisions of the courts of justice in those cases.

The above is of course only a faint outline, of a very masterly display of forensic eloquence. At the same time, I am not sensible of having omitted any of the prominent points enlarged on by the learned counsel. In offering some observations on those points, I shall adhere, as near as possible, to the order in which they have been stated, without however going so much into detail, as to make each a distinct subject of remark.

The first point ;—“ *That it is the motive and intention, which constitute the essence of all crimes,*” is one that, in every view, claims the first notice, being repeatedly recurred to in the defence. On this head, the law, both in England and in Scotland, in regard to duelling, seems quite clear. Without needlessly multiplying authorities, I shall refer only to two, whom all accord in respecting. Mr. Baron Hume, as before quoted, says, “ When a duel takes place upon a challenge, and is followed with the death of one of the parties, this according to the law of Scotland, is murder in the survivor, how fair and equal soever the manner of conducting the combat.” Judge Foster says, “ Deliberate duelling, if death ensueth, is, in the eye of the law, murder.

For duels are generally founded in deep revenge; and though a person should be drawn into it, not upon a motive so criminal, but merely upon the punctilio of what the swordsmen falsely call honour, that will not excuse. For he that deliberately seeketh the blood of another upon a private quarrel, acteth in defiance of all law, human and divine, whatever his motive may be*." The learned counsel has, for the purpose of supporting his position that a proof of malice must be shewn to render the act of killing in a duel criminal, inserted in his speech a quotation from Mr. Hume's Criminal Law, on the nature of "dole,"—"of that corrupt, evil intention, which is essential to the guilt of any crime†." This is a principle illustrated with all the perspicuity that characterizes the able writer referred to, and is one which never can, with any reason, be disputed. But if reference had been made to other parts of Mr. Hume's work, it must have been seen that, in the eye of the law, the act of duelling inherently manifests this evil intention. The learned counsel, in his quotation, has laid particular emphasis on the opinion of Judge Foster with regard to general crime; "that the act must be attended with such circumstances as indicate a corrupt and malignant disposition, a heart contemptuous of order, and regardless of society." Yet we have seen, in the extract before given, what the opinion of that eminent judge

* See too the quotations in explanation of this principle, in the charge addressed to the jury, by the Lord Justice-Clerk, in Mr. Stuart's trial.

† Mr. Stuart's Trial, p. 149.

was as to the crime of duelling. No opinion can be more clearly expressed than his has been. Indeed, it is remarkable, that the two legal authorities quoted by the learned counsel, in support of his theory, should, by taking the context of their writings, so directly shew how untenable it is. The question, however, rests not on a mere legal basis. The fact of duelling, being in its nature malicious and wicked, is founded on the plainest dictates of reason and of religion. That “duels are generally founded in deep revenge,” (in the words of Judge Foster,) must be known to every one. “Hatred, variance, emulations, wrath, strife* ;” those passions which Scripture so severely denounces, are all identified with the feeling of revenge ; are all, in their very essence, malicious and wicked, and, in a large proportion of instances, all form the root and principle of duelling. It is one of the prominent evils of that murderous practice, that it gives such full play to all the hellish passions of the heart ; promotes at once their excitement ; and admits their gratification. In some instances, a claim has been urged to a refinement of feeling, superior to such a temper of mind, as all of us are willing to disown ; and it must be at all times gratifying to see any reasonable ground for even the modified admission of such a claim. But let us not be too prone to blind ourselves on such matters. If even all the irritation—all the resentment produced by the first cause of offence, could be laid aside, we cannot well im-

* Gal. v. 20.

agine two persons meeting, after calm deliberation, in the field of combat, avowedly to hazard their own lives, and to endeavour to take the lives of each other, without entertaining a pretty strong feeling of ill-will. Yet we are told by infallible authority: "He that loveth not his brother, abideth in death. Whosoever hateth his brother is a murderer; and ye know that no murderer hath eternal life abiding in him*." If revenge, in its most rancorous shape, does not at all times impel to the field of combat, is there no pride, no selfishness, no tenacity of worldly distinction, no desire of worldly applause, lurking in the heart? If such dispositions do exist, (and who can say, in such circumstances, that they do not?) we know, from the same infallible authority, that they do in no respect justify, but greatly aggravate the guilt of the proceeding in the sight of Him "who searcheth the heart and trieth the reins," and "whose eye is purer than to behold iniquity." Let us keep in mind, that the severe enactments existing in every Christian country against murder, are clearly founded on the authority of the divine law, and obedience is due to that law, as well as to the law of our land. The latter we may fritter away by palliatives and explanations, at variance with its plain intention; but "the word of God endureth for ever," and will admit of no such compromise. The law of our country, resting on the basis of the divine word, has very distinctly made us to understand the extent to which we may go, in

* 1st Epist. of St. John, chap. iii. 14.

taking the life of another ; and it seems manifest, in recurring to those authorities which constitute the governing principle of our lives, that we have no warrant for considering duelling, if death ensues, in any other light than as aggravated murder ; aggravated, because generally attended with a fixed determination of purpose—with that deliberate preference of the favour of man to the will of God, which we know to be abhorrent in his sight*. The established law against duelling is too clear to be met in any other way than that in which it has been met by the learned counsel ; namely, in the

* Different instances have occurred of persons who have fallen in duels, that have been apparently under considerable religious impressions, and who, before engaging in the act, have expressed a deep sense of the sinfulness of its nature. It is mournful to think, that those very religious impressions increased the guilt in which they were deliberately involving themselves ; sinning, as they did, “against the clearest light.” Surely it is a painful sight to see our fellow creatures thus dragged, almost as struggling victims, to the altar of Moloch ; the souls of our fellow men thus cruelly and wantonly sacrificed at the shrine of fashion’s idol !

As particularly applicable to what has been stated above, I shall insert here a farther extract from an enlightened author already quoted, (Dwight.) “ I well know that duellists profess themselves to be free from these passions in cases of this kind, and declare that they proceed to these horrible rencounters with entire coolness and good nature. These professions, however, have not the most distant claim to credit. All men, who feel themselves exposed to the censures of mankind, endeavour to rebut them in the best manner in their power. Fair professions are the most obvious means of rebutting them. In the same manner the bully conceals his cowardice, and the hypocrite his religion ; and both have as good claims to be believed as the duellist. Cool, indeed, he may be, in some instances, that is, not agitated by fear, but every thing in his situation and in his conduct proves that he is angry and revengeful.”

way of surmise and suggestion. No one knows better than he does how to throw a dazzling glare—a sort of blue light, over a dark corner of his argument. No one can glide more lightly over ground that is apt to yield to the pressure ; to

“ Just hint a fault, and hesitate dislike.”

Secondly,—“ *The advantages of duelling.*” The learned counsel has, under this head, in a space of no great extent, grouped together a considerable variety of advantages of a very fascinating description. The opinions, however, that have been delivered on this point ought to be received only after the test of the examination, which they naturally call for, as the artist’s skill sometimes heightens perspective by a crowd of figures that singly could not pass. The learned counsel has observed, “ It ought in fairness to be remembered, that however awkward, however unequal and immoral a remedy, it (duelling) may appear, yet that in point of historical fact, it has come as a corrective to greater immoralities, and a preventive of greater crimes. It is well known to all who are well versed in history, that, in point of fact, the practice of honourable duelling superseded the guilt and atrocity of private assassination.”

✓ Courage, courtesy of manners, and many of the attractive graces of life, are also described as flowing from the same source. With regard to the prevention of assassination, it does not appear in what respect history bears out the opinion of the learned counsel. I rather think it tends to an opposite conclusion. At the period when duelling spread its

widest havoc over Europe, the practice of assassination too was extensively engaged in the work of death: the origin of both was much the same,—a barbarous state of manners, and that cruelty and blood-thirstiness of disposition which a long-continued state of war and commotion is so sure to encourage. In proportion as knowledge, and the light of Christianity spread in Europe, a more refined, a more humane conduct gradually prevailed. As the sun rose in the firmament, the shades of night receded. I have not at hand the means of referring to the original authorities every where quoted; but the fact seems no where doubted, that the system of duelling was, in the southern nations of Europe, pushed to fully as excessive an extent as in the more northern countries,—while the atrocities of private assassination existed to perhaps a greater degree. All writers point out Italy as pre-eminent in the latter horrid practice, and it so continues to this day, as justly stated by the learned counsel. If the hypothesis alluded to were correct, it might have been expected that assassination should have been least known where its more honourable rival, duelling, prevailed; and that the poison should have ceased its operation where its kindred antidote was abundantly at hand. But the history of both the north and south of Europe seems to shew the reverse of this as the fact. The most enlightened men of their day, Sully and Bacon, seem to have had no such impression as to the supposed advantage of duelling, when they laboured with all their minds to extirpate it as a moral pestilence from the earth. In the very na-

ture of things, such an advantage never can follow. It would be contrary to all the general analogies, and properties of nature, that the evils of one substance should correct those of another of the same component character. And, what is true in the physical, is not less so in the moral world. “Doth a fountain send forth at the same place sweet water and bitter*?” We must then recur to a juster, a higher source, for an explanation of the change which has, to a material extent, taken place, in regard to the practice of both duelling and assassination. That cause seems indisputably the increased diffusion of Christian light and knowledge, of which the progress in the northern part of Europe, during the two last centuries of its history, has been great. If duelling has been enabled to hold its ground more tenaciously than assassination, it is because the latter presents itself to our sight in undisguised horror, which the former does not quite do :

“It is a monster of such hideous mien,
As to be hated, needs but to be seen.”

Whereas duelling has been, in pleasing the eye of the world, daubed over with a sort of glossy tint that conceals a little its true character, its native deformity : but both are of the same kindred, both of the same meretricious origin. The cause of the distinction in regard to the southern countries of Europe is manifest. These countries are, in moral culture, a century, perhaps two centuries, behind their more favoured neighbours. Bowed to the earth under

* Epistle of St. James, chap. iii. -

the miserable thralldom of Roman Catholic superstition, the human mind is there still kept in the fetters of ignorance, the Gospel light has, (by detestable artifice,) been in a great measure shut out from regions which nature seems to have designed as the garden of the world; its ray there feebly and indistinctly glimmers; its precepts are little practised; those rules of conduct which the Gospel so directly prescribes, are comparatively little observed; and the blessings it never fails to impart, comparatively little known. All this, however, is merely comparative, and nothing more. Let it not be for a moment understood from any thing I may have said, that we, in the northern hemisphere, have gone far enough, and need seek no farther advances. Wide, grievously wide, indeed, would this be of the truth. All that I mean to aver is, that in proportion as knowledge and civilization, founded on Christian principle, are cultivated in any country, or in the mind of any individual, in that proportion will it generally be found, that the shedding of the blood of our neighbour, in any form, or under any pretext, is held in detestation. The idea of correcting private assassination by duelling, is not new. About the end of the 13th century, in the reign of Philip the Fair of France,—a prince whose enlightened understanding outstripped the darkness of his age—a clamour on the like ground was excited against an edict which that king had wisely published at that early period, for the prohibition of duelling, and which he was thereby compelled to recal. It was allowable that the argument should be urged on the

part of the learned counsel ; but surely the precedent, in the reign of Philip, is not one to be now followed. Surely it is time to have done with such barbarous notions, and such not less barbarous usages.

It has been stated, that “ the high and general esteem in which courage and intrepidity are held,” is among the fruits of duelling. That the familiar shedding of blood tends to promote the courage partaking of ferocity of character, is quite clear: experience shews it to be so at all times. But this is not surely the courage one would wish to see promoted in a civilized country. There no courage ought ever to be truly prized that is not founded on virtuous, on Christian principle. Courage of this kind, actuated by a right motive, and directed to a right end, is indeed a noble object, and justly merits all the applause that usually accompanies its exercise. It is, too, the only kind of courage that can be absolutely relied on; for, having principle as its basis, it is founded on a rock, and cannot be shaken. The feeling appears to have been uniform in all ages. I forget what classical author it is who describes the virtuous man struggling with difficulty, as a sight worthy of the gods to behold. And the Latin poet well expresses the stability of virtuous resolution:—

“ Justum et tenacem propositi virum
Non civium ardor prava jubentium
Non vultus instantis tyranni
Mente quatit solida
.
.
.
.
.
.
.
.
Si fractus illabatur orbis
Impavidum ferient ruinæ.”

The introduction of Christianity has in no degree impaired the foundations of true courage. On the contrary, it has elevated, it has ennobled its character. Whether we direct our view to ancient or modern times, the courage such as I speak of holds its place in the human breast quite independently of any such artificial, of any such imaginary prop as the practice of duelling. We have seen that duelling was altogether unknown to the nations of antiquity most distinguished by bravery. In descending to later times, the case does not admit of such conclusive illustration; but no reasonable doubt can be entertained regarding it. The pages of Christian history are full of examples of heroic firmness and intrepidity in the hour of trial. If we turn our view to the early ages of Christianity, can there be a more striking model of this than is to be met with in the character of the great Apostle of the Gentiles, who, to the most sympathizing heart, and the utmost tenderness of feeling*, united a degree of fortitude, of intrepid ardour and boldness, that have never been surpassed? *He* was indeed “a burning and a shining light;” but much the same spirit animated generally the Christians of the early ages of the church, in the severe persecutions to which they were at different times exposed. Their calmness, their resolution, and their constancy in the midst of grievous sufferings, fill the mind with astonishment. In following the current of history, we find the same

* Our language presents few descriptions more beautiful than the parting scenes of St. Paul from his faithfully-attached friends. (Acts xx. and xxi.) Vide also 2 Cor. xi.

magnanimous spirit upholding the victims of subsequent cruelties so horridly exercised among the Waldenses, the Albigenses, and the noble martyrs of our Reformation at home and abroad. All the illustrious persons whose blood was shed for the faith which they professed, and whose history has reached us, appear to have been actuated by the truest principles of unalterable courage. The protracted sufferings of imprisonment, of torture, of the sword, of the flames, did not appal them. In the present happy, tranquil times, we cannot picture to ourselves any distinct idea of the extent of such heart-rending miseries; but every one must be sensible that none could have endured such an ordeal, but those who were actuated by courageous feeling of very high tone. Yet, in so far as our knowledge of any of the persons alluded to extends, can we suppose that, consistently with their principles, any earthly consideration would have induced them (ready, as they proved themselves, to lay down their lives in a right cause) to do so in the way practised in modern duelling, or to take the life of any one, even of their bitterest enemies, by such means? The question need only be stated, to carry with it its own answer. If the thing was not lawful to them, —if it was not necessary, as a means of strengthening their courage, can the practice be so to us? When we stand at the bar of God, at the final day of retribution, our conduct will be measured by the same standard as theirs will be; it will be weighed in the same balance. While on this subject, I am induced to observe, that there is no end to the para-

doxes in which the human mind is apt to bewilder itself. I remember, some years ago, its being strenuously urged in Parliament by a leading authority there *, that bull-baiting ought to be countenanced and continued in this country as useful in promoting the national courage. Surely, of all the cruel pastimes in this kingdom, there can be none more calculated to brutalize the character of the people than this, and its existence is a scandal to the country that tolerates it. Instead of courage mingling with it, cowardice, mixed with ferocity, is the only feature to be recognized †. We find, too, that the abolition of the combats of gladiators was apparently looked to with no favourable eye, as ominous with regard to the national courage of that day. The author of the *Decline and Fall of the Roman Empire*, referring to that event, observes, “ The citizens, who adhered to the manners of their ancestors, might perhaps insinuate that the last remains of a martial spirit were preserved in this school of fortitude, which accustomed the Romans to the sight of blood, and to the contempt of death,—a vain and cruel prejudice, so nobly confuted by the valour of ancient Greece and of modern Europe ‡.”

* I believe the late Mr. Windham.

† Another recent attempt has been unsuccessfully made in Parliament to abolish this practice. The argument that was used is sufficiently strange,—that, because other modes of cruelty exist, we are to do nothing towards the suppression of that which is directly tangible, and which meets the eye in circumstances of ferocity peculiarly aggravated.

‡ It is a striking proof of the effect of habit and prejudice, that those cruel shows found an advocate in the benevolent, enlightened Cicero, from the erroneous impression mentioned.

In ranking duelling with such usages, it is certainly not placed with any very honourable fraternity. But, I doubt not, the time will come, when it will be found to have just as little claim to the merit of promoting laudable courage.

The learned counsel has classed among the advantages resulting from duelling, “ the universal diffusion of fairness, manliness, forbearance, and handsome conduct among all the gentlemen of the land.” The opinion of the learned counsel on this point is far from being peculiar. It is, on the contrary, supported by very general assent. It must not, however, be rashly admitted, as there is much to qualify it, if not to prove that it is wholly founded in error. A good deal of what has been already said may apply here. Let it be farther noticed, that the inferences to which we have been adverting have been drawn from premises which cannot be admitted, namely, that it is lawful to do evil that other evil may be averted, or good produced. This is an admission which would, in human affairs, open the flood-gates for a torrent of mischief. The learned counsel pretty fully admits, that duelling is “ an awkward, imperfect, unequal, and immoral remedy” for the evils he points out. There cannot seemingly be a greater reflection cast on the municipal regulations of any country, than the supposed necessity of resorting to such a remedy ; than to suppose that it can be necessary to tolerate especially one kind of murder, for the purpose of averting another of a worse description ; or to call in such an auxiliary for the purpose of producing any ideal advan-

tage whatever. In the decline of the Roman empire, while that mighty fabric was like a venerable ruin dropping to decay, it was one of the wretched shifts of that period to employ one horde of barbarous invaders to repel another: and lax governments have at different times employed desperadoes as a cover of their weakness. Such unworthy resources can only be the refuge of governments in the last stages of decrepitude or depravity. But, is not the like principle, in the case of municipal regulation, acted on where a government seeks to bolster up the public welfare on so rotten a foundation as that of arraying one set of crimes as the opponents of another? This objection, however, is the least consideration. There is one of more magnitude infinitely, in the direct tendency which such a principle has to call in question the wisdom and the excellence of the moral government of the universe. To degrade to the level of our feeble perceptions the power of Omnipotence, by supposing for a moment, that it could be ever necessary for the Almighty to enter into a species of compromise with his rebellious creatures, and for the purpose of preserving one portion of the moral empire somewhat entire, to deliver up the rest to the scope of their lawless imaginations. The mind of every one must surely recoil from any such idea. The beautiful order of creation, and the infinitely wise system of providential arrangement, so calculated to fix on every reflecting mind the most solemn impressions of adoring reverence and gratitude, can admit of no supposition of any such defect as this. The Apostle says, "God cannot be

tempted with evil, neither tempteth he any man." Away then with such derogatory notions as these. The bitterness of the "waters of Marah" is to be rectified, and "the waters made sweet" by the use of widely different means. Let it be done "by the leaves of the tree of life, which are "for the healing of the nations*."

The above has been stated under the momentary admission, that some short-lived, temporary advantage, might emanate from duelling, in the way of refined courtesy of manners. But really I cannot discover the least solid ground for any such assumption. I have known repeated and decided examples, where the spirit of duelling has led to much overbearing insolence; much violence; and where the thirst of blood has been evidently sharpened by a certain confidence in superior dexterity in the work of death. Such a feeling as this is, I believe, very far from uniformly prevailing. But we must also throw, into the scale of inducement, the desire to shine in feats of single combat; the sort of glare and glitter, that the estimation of the world, in its wisdom, or rather in its depravity, is apt to throw around such deeds of darkness. In doing all this, and in reckoning that temper of mind, which such habits of society are sure to keep alive, I am persuaded that the inverse of the proposition is the truth; and that, in casting up the account of good and evil, we shall find that the license of duelling leads to far more insolence—far more violence, than

* Exod. xv. 23, &c. Rev. xxii. 2.

it can ever check. Is it indeed natural to suppose, that a practice, confessedly engendered in barbarism, and that is nurtured by blood, can ever produce a softened—refined tone of manners? If it be asked, how are refinement and courtesy to be cultivated? I think we need not go farther than the precepts of Him “who spake as never man spake? On whose divine authority we are again and again told, in many Scriptural passages, to be “kindly affectioned one to another, with brotherly love; in honour preferring one another;—to be “kind one to another, tender-hearted, forgiving one another, even as God, for Christ’s sake, hath forgiven us;”—to be “pitiful, courteous.” This is the foundation of the only true politeness,—a politeness perfectly compatible with the greatest accomplishment of manners,—the highest refinement of taste, though it may differ considerably from that spurious description which, like a gilded counterfeit, “shifts in splendid traffic round the land.”

That the human mind is not so wholly debased as to be only kept in check—to be only forced to the observance of the decencies of life, by the pains and penalties of duelling, may, I think, be collected from the circumstances of those classes of society who are never called on to engage in such combats; the ministers of the Gospel*, and the judges of our land. The obvious fact that we rather look for an in-

* If duelling is not a violation of the divine laws, why should the feeling be so uniform as to the indecency of clergymen engaging in such matters? The conduct of all of us will be tried by the same standard, and if the practice is inadmissible as to clergymen, how can it be safe as to others?

creased degree of urbanity in those who hold such stations, tends somewhat to shew that duelling is not essential for maintaining that urbanity, and that the object is to be more certainly attained, by raising the tone of national feeling. If we desire evidence of much the same nature, on a more extended scale, let us direct our view to France, where, as has been seen, the abolition of duelling took place, in one of the most splendid eras of her history. We have not heard that at that memorable period the number of assassinations were found to have increased; that the martial ardour, or energies of the country, became from that cause paralysed; or that the politeness of that proverbially polite time was found to have diminished. The allegation lies against us, that we are in some things too much prone to imitate the habits of our continental neighbours. Here is presented a safe model for our imitation. Here experience has opened to our view an honourable path, one in which we may securely proceed, and one leading to sure results. Many were the evils that France, during a long succession of years, in the late eventful contest, brought on the nations of Europe. It would, indeed, be a gratifying sight to see that country now made indirectly the means of awakening any of her neighbours to a sense of that duty which religion, morality, and the claims of civilized and social life—all life's relative ties, so strongly impose. We may here safely say, "Go, and do thou likewise *."

* It will be of course understood that this refers to the period of the abolition of duelling in France, not to the more recent practice of that country.

Thirdly,—“ The practice of duelling vindicated by Dr. Johnson, Dr. Ferguson, and Lord Kames.” ✓
 Having already enlarged much farther in this discussion than I had any intention of doing, I must now endeavour proportionately to abridge what may yet remain to be said. At the head of the above respectable triumvirate stands a name that may be truly called “*clarum et venerabile nomen*,”—a name which most have been accustomed from earliest youth to reverence. To apply his own words, we may even now justly say of Dr. Johnson, that in his works “he speaks, and attention watches his lips; he reasons, and conviction closes his periods.” He was one of that superior order of beings who seem to be, at wide intervals, from time to time, raised up as teachers of mankind: sages who, by their endowments, add lustre to the human character, and give enlargement to the sphere of human intellect. With all this feeling, however, we must be cautious of carrying reverence to excess. The adage, “*nullius addictus jurare in verba magistri*,” to a certain extent ought to be the rule of every one, at all capable of exercising a sound judgment; and however eminent a writer may be, we must be careful not to receive the illustrations of what he may have considered as truth, for truth itself. Any one acquainted with the history of Dr. Johnson, must be aware, that vigorous as were his mental powers, and rich as were the stores of his understanding, he sometimes entertained opinions which are not now thought to bear the stamp of correctness. Fallibility marks all human judgment;

and we have often occasion to say of the wisest and best, what a noble writer says of a person once eminent, “ Alas poor human nature *.” This appears strongly evinced in regard to the question on which the opinion of Dr. Johnson has been now quoted. In so far as any opinion he may have expressed, has a tendency to give countenance to duelling, it is contrary to Scripture, and is therefore plainly erroneous. Whether Dr. Johnson was, or was not serious, or was doubtful as to the sentiments he uttered, it is deeply to be lamented that any such sentiments should have the authority of his name, as manifest evil consequence must have, and has, resulted,—effects which would have filled his benevolent mind with indescribable horror, if they could have been in their fulness presented to his view. That the opinion, however, of Dr. Johnson on the subject of duelling was, as far as possible from being a settled opinion, is made quite clear by a note inserted in Mr. Boswell’s interesting biographical history, which, as it has been omitted in the quotations of the learned Counsel, I am induced to insert here. It abundantly shews that Dr. Johnson, as well as his biographer, had, to say the least, great doubts.

“ I think it necessary to caution my readers against concluding, that, in this or any other conversation of Dr. Johnson, they have his serious and deliberate opinion on the subject of duelling. In my journal of a Tour to the Hebrides, third edition,

* Lord Chesterfield’s character of Bolingbroke.

p. 386, it appears that he made this frank confession :—" Nobody at times talks more laxly than I do ;" and Ibid. p. 231, " He fairly owned he could not explain the rationality of duelling." We may therefore infer, that he could not think that justifiable which seems so inconsistent with the spirit of the Gospel. At the same time, it must be confessed, that from the prevalent notions of honour, a gentleman who receives a challenge, is reduced to a dreadful alternative. A remarkable instance of this, is furnished by a clause in the will of the late Colonel Thomas of the Guards, written the night before he fell in a duel, September 3, 1783 :—" In the first place, I commit my soul to Almighty God, in hopes of his mercy and pardon for the irreligious step I now (in compliance with the unwarrantable customs of this wicked world,) put myself under the necessity of taking."

In alluding to the other authorities quoted by the learned counsel, Dr. Ferguson and Lord Kames, it is not necessary to go into a particular examination of the grounds on which the opinions of those eminent writers are founded. As matter of general observation, I am led to notice that, as much of the criminality of duelling hinges on the point of its being a breach of the Divine Law, the condemnation which it will call forth, must a good deal depend on our implicitly receiving the Scriptures as the revealed will of God; on our belief in Revelation, and on the degree in which it influences the general habits of our mind and conduct. How far this applies in the case of the two authors referred to, I need not

particularly point out, as any one can judge regarding it. High as the authorities are, their reasoning on this point appears to exhibit some very palpable fallacies. It is sufficient to refer to the quotations given by the learned counsel, to see how inextricable the labyrinth is in which they are entangled, in their endeavour in any plausible way, to reconcile the many acknowledged evils of duelling, with any thing like, I do not say religion or law, but plain sense. Dr. Ferguson describes duelling as the consequence of "singular caprice;" as a practice in which "the dignity of justice is made to stoop to the caprice of fashion," as "absurdity," "folly*." Lord Kames, in a passage immediately following the quotation introduced by the learned counsel, sets about devising means for getting rid of, or at least, modifying the evil; and one of those means is the establishment of a court of honour. He considers "the frequency of duels, in modern times, as no slight symptom of degeneracy: Regardless of our country, selfishness is exerted without disguise when reputation or character is in question." The reprehensible nature of duelling is very abundantly admitted; but it has been thought necessary, in ac-

* We trust that there will be found some better and more effectual means of rectifying this great evil, than have been suggested by the learned writer referred to. Dr. Ferguson observes, "absurdity is more likely to cure itself by being suffered to incur its extreme, than by being kept within certain bounds, which serve to conceal the extent of its folly; and duelling, like other fashions, is likely to wear itself out when it becomes an affectation of the vulgar, and ceases to distinguish those who are termed men of fashion."—*Moral and Political Science*, vol. ii. p. 283.

commodation to the taste and habits of society; that is to say, the principle is assumed, that evil shall be done for the sake of certain ideal advantage. It has been assumed, by an unnatural inversion of things, that the divine and human laws shall be made subject to those corrupt maxims and customs of society which they expressly forbid, and which it is their special object to correct.

Fourthly,—" *The practice of the courts of justice in cases of duelling.*" The learned counsel has here expressed an opinion that juries are not generally called on to enforce the laws against duelling, and it is to be inferred, that in most cases it is thought their duty not to do so. At the same time, the learned counsel seems sensible, and justly so, that the ground here occupied is rather *epineuse*. It cannot be otherwise, when it is considered that this course has a strong tendency to render juries makers of the law, not its administrators; and to vest our courts of justice with powers superior to the legislative powers. The learned counsel has mentioned two particular instances in which juries have exercised this dispensing power, for the purpose of establishing the conclusion that it ought to be extended to duelling. That there have been cases in which the rigour of the law has been tempered by the direction of juries, admits of no question. But the practice is, nevertheless, in a high degree objectionable, involving so directly as it does laxity in the interpretation of a solemn oath. The difference between a precedent in what is right, and in what is wrong, is wide. In the former case it is an object

held forth for imitation, an example to be copied from,—in the latter, it is a beacon to warn us that shoals and quicksands are at hand. Our descent in what is wrong is so naturally rapid,—it may be so truly said in this, “*facilis est descensus*,” that we cannot too soon stop any downward course of the kind. If a law is so manifestly rigorous or unjust, as uniformly to call for the exercise of a dispensing power, such a law ought to be, by parliamentary authority, modified or rescinded. It is understood that the two instances of the exercise of such discretionary power quoted by the learned counsel, stand much in this situation. The latter, the old law of Scotland regarding child-murder, has been, in fact, abrogated; and the former, the English law regarding larceny, is understood to be under revision. Perhaps the subject might be here not improperly left without farther remark,—but as it is desirable that the question should be understood in its different bearings, I am induced to offer some further short observations as to the nature of the laws which the learned counsel has referred to. The necessity that a jury sometimes think themselves under of lowering, in their verdicts, the known value of stolen property, for the purpose of avoiding the capital part of the offence, is no doubt a manifest evil. It is to be recollected, however, that the value of property is now widely different from what it was when the laws against larceny were enacted, so that it may occur that, though a jury may deviate from the letter of the law against this crime, they do not in fact deviate from its true intention. It is the object of

those laws to inflict punishment, and thereby to check a description of crime deeply injurious to society; but the punishment should be always as much as possible proportioned to the nature and consequence of the offence. If, in the progress of internal improvement, means of punishment can be devised more lenient than death, and can be safely administered consistently with the public protection, the duty of resorting to such means is obvious. It is observed by high authority, "that nothing but the evident result of absolute necessity, can authorize the destruction of mankind by the hand of man." In those cases of larceny where the process of reduction is practised, the sum at issue is usually small in amount, and the individual injury inconsiderable; a mitigated punishment, is therefore, not only consonant with the calls of humanity, but also with the spirit and true intention of our laws,—and mercy is here only rendered objectionable by the source from which it is derived.

The other case quoted by the learned counsel, is that of the abrogated law in Scotland regarding child-murder. Mr. Baron Hume terms this to have been a "rigorous edict;" and observes, "such was the facility of conviction laid open by the statute, as had at one time betrayed both prosecutor and judges into a degree of slovenliness, and of indecent haste in trials for child-murder, to which I find nothing to be compared with respect to any other article of our criminal system*." Many convictions

* Criminal Law, vol. i. p. 486.

were for a time obtained under this statute*; but as it was found in its operation to involve the innocent with the guilty, and to punish for a crime which the sufferer had no intention to commit, it appears to have been rendered inoperative by the verdicts of our juries†, before the period arrived when the legislature expunged it from the statute book. A comparison, to be useful in the way of illustration, must be founded on cases somewhat analogous; but in comparing the cases mentioned with that of duelling, the analogy appears essentially to fail. The shedding of the blood of our neighbour has been, from the earliest ages of the world, denounced as a crime of the greatest magnitude in the sight of Heaven. The divine law on this subject has been oftentimes repeated with the severest threatenings; and the limits strictly marked, beyond which the shedding of blood is not lawful. The law of our country against wilful murder, in any shape, as has been already shewn, is founded on the like basis. In no instance is any compromise allowed. “Who-so sheddeth man’s blood, by man shall his blood be shed.” Pardon may at any time flow from that fountain of human mercy, which the law of our land has wisely and humanely established, but the gratuitous exercise of such mercy by any inferior

* The statute was passed in the reign of King William and Queen Mary. It has been since repealed.

† In such cases, it seems to be the duty of a juror, under the obligation of his oath, to return the verdict prescribed by law, but to *recommmend* to mercy.

authority, appears, in a case so clearly marked, to be (in addition to the solemn considerations attached to a juror's oath) nothing short of the perversion of justice. Though the offence of larceny, as has been seen, is not uniformly punished with death, it is punished with severity proportioned to what any such violation of the rights of the community calls for ; it is stamped in the degree calculated to punish the offender, and to discourage the offence. Wide indeed, in all respects, is the interval between the comparatively trivial offence of larceny, and the crime of duelling, which, far from being of a transitory and individual character, in its comprehensive consequences, in its immediate effect, and ultimate example, deprives the country of valuable lives ; plunges whole families into the depths of mourning and distress ; and hurries the souls of our fellow-men unprepared into an awful eternity. Wide too is the interval of punishment. Larceny is, on detection, suitably stigmatized ; but how much the reverse of this happens in the case of duelling every one knows. There, though death ensues—though the crime is plainly murder, rarely does any punishment take place. The offender is brought to trial ; but he retires from the bar of justice, usually more triumphant than when brought to it ; and, instead of checking the evil, the strongest encouragement is thereby held out for the renewal of the offence. The case of the statute against child-murder appears to be little analogous ; as in the case of duelling, the evidence is in general too direct to ad-

mit of any doubt as to the identity of the person by whose hand the deed of death has been effected.

The general system of jurisprudence in our happy country, is a blessing that ought to impress every mind with admiration, and every heart with gratitude. It may be viewed as the great security of our lives and property, and the firm palladium of our civil rights and many inestimable privileges. In the stately edifice of our Constitution, it rises to the view as one of the strongest and most beautiful of its pillars, combining, in rare union, every order of moral architecture that could flow from the wisdom, the experience, the talents, the purity of former and modern times. This is to say much of any human system; but it would be saying too much, if it were not at the same time admitted, that the judicial system of our country, so deservedly admired, occasionally partakes of material defects; and I know none more prominent than the administration of the laws in duelling*. The circumstance of the Jury's imbibing, in such cases, the usual feelings, ought not to excite surprise, as it is natural that they should entertain sentiments responsive to those of the society with which they usually mingle. But it is painfully evident also, that the Judges of the land—the guardians of the law, are themselves not exempted from it. This vice, of colossal height, with gigantic strides, bears down the barriers interposed

* A clear exception too is to be made, with regard to many of our laws that have a manifest tendency to lower the sanctity of an oath, and to diminish our reverence for the obligation of truth. These are blots in our statute book of a deeply injurious character.

by religion and law, and with audacious front oversteps the bench itself, requiring the mace of justice to do it homage. The charges usually delivered by our Judges on such occasions too plainly evince this. Then the law is laid down ; but this is rarely done in a way that exhibits the magnitude of the crime, or that brings it home to the heart *. Yet of all cases, the crime of duelling is that in which the eloquence and the authority of the Judge, in all its weight, are most powerfully called for. Nothing is more easy than the delivery of an emphatic address in those cases of crime, murder, in its usual acceptation, robbery, and such like, which the universal assent of mankind concurs in condemning. The usual charges from the bench on those occasions are all right ; but it may be doubted if they generally produce any very strong feeling in the minds of the hearers, from the obvious circumstance, that they in common do little more than convey ideas already entertained—merely “reflect the image of the breast.” It is in those instances where the Judge has to oppose himself to the ordinary course of pub-

* Many are the examples of this that might be mentioned, but I need refer to none stronger than that quoted by the learned Counsel, in the trial of Mr. Purefoy. (*Mr. Stuart's Trial*, p. 156.) This is the more worthy of notice, as the learned counsel points it out as “one very famous, as being the first of those occasions in which Judges admitted from the bench the necessity and expediency of Juries tempering the law, where, by necessity, Judges have held themselves bound by it.” In as deliberate a case of revenge and of murder as to all appearance could well occur, the Jury were, on that occasion, given to understand by the Judge, that a verdict of acquittal would be a “*love-ly thing in the sight of both God and man !*”

lic opinion, that the exertion of his powers is especially called forth ;—where the task is imposed upon him of bringing back to its right channel the torrent that has deviated from it, and is spreading its devastation around.

Our laws are of too sacred a nature to be lightly tampered with. The sword of justice never should be wielded in vain ; and the vain pageant—the unmeaning display that takes places in every ordinary case of duelling, must be deeply and fatally injurious. Unless in cases of extraordinary aggravation, every one knows exactly what the whole process, from the commission of the crime to the *denouement* of the acquittal, is to be ; and there seems very strong reason to think, that, instead of a display much worse than negatively useless, it would be better that the whole thing were allowed to pass away unnoticed. As the law is at present administered, there is a positive encouragement to commit the crime ; and it might be wiser to trust to that sort of security against the excess of duelling which is to be found in every mind, and above all, in every heart, of any right cultivation, than to place our Courts of Justice in the unnatural situation in which they at present stand,—of being little more than seconds in such affairs. That the security of moral feeling, in regard to the shedding of the blood of another is not inconsiderable, will more strongly appear, if we consider what would be the probable consequence of applying the hundredth part of the stimulus in favour of duelling, to almost any other crime that disturbs society. If, instead of selecting a murderous

practice, derived from our ancestors while they yet roamed the woods, and founding on it a fancied theory of increased manliness, courage, refinement, courtesy, we ascended to times more remote but more refined, we might there select, from a great variety of patterns, usages that have happened not to descend with the stream of time, but which, to the full, might be as beneficial, with the advantage of being more classical. The code of Lycurgus is not deficient in this respect ; and the licensed practice of theft might be chosen, as a means of sharpening the understanding, quickening the acuteness of intellect in our mutual intercourse, and perhaps even of adding, as in Sparta, to the wisdom of our national councils, and to the vigour of our national arms. If for these, or any such substantial reasons, the practice of theft were to become indirectly sanctioned ; if the law against thieving were, in all cases of trial, to be laid duly down, in the understanding, however, that it was not to be enforced, and if it became quite intelligible, that a verdict of acquittal would, in deference to the prevailing taste, in all possible cases, be a commendable thing, we may very well judge of the point to which this new mode of practice would tend in our police administration. If, with a stronger excitement than even all this, in the case of duelling, it is not carried beyond its present extent, we may, I think, form some idea of what the effect would be, of teaching, by a due enforcement of the law, that sort of moral feeling, which is at present in truth almost the only barrier by which duelling stands opposed. The Judges of our land

are, by their high office, placed on a summit that “midway leaves the storm,”—above the mists and vapours that thicken round the mountain’s base,—and, as the guardians of our laws, none can have more in their power, in the way of exciting a right tone of feeling in the minds of their countrymen. They cannot direct the verdicts that Juries are to return, but they can point the course that ought to be followed; and, where error has occurred, admonish as to its consequences. In regard to duelling, the effect of this would, in all probability, be quickly felt; but if the public opinion should still persist in error, they, at least, would be “free from the blood of all men.” On the other hand, if we view any undue relaxation of the law, an unqualified acquittal, in a case of duelling, where the facts have been incontrovertibly established, as assuredly encouraging the crime and leading to the future loss of many lives, the responsibility thus incurred seems very great. The Prophet, in vehement language, says, “But if the watchman see the sword come, and blow not the trumpet, and the people be not warned; if the sword come and take any person from among them, he is taken away in his iniquity, but his blood will I require at the watchman’s hand*.” Let it not be supposed, from any thing I may have said, that I would for a moment propose, that if justice has slumbered, she should now, like a roused lion, awake, to spring on her prey. This would be

* Ezekiel xxxiii.

in every respect cruel and unjustifiable. The clear line of duty is, that the community should, through the medium of our Courts of Justice, be awakened if possible to view the crime of duelling in its true magnitude; that the severities of the law shall be denounced against those who persist in the practice; and if, after the warning, it is so persisted in, that those severities shall be enforced. I know not on what right ground a mitigation of the existing penalty can be proposed, where death ensues in duelling, but if any just cause for such mitigation does appear, legislative interference ought to be called for, to assign the due extent of punishment; and this being assigned, it ought to be undeviatingly executed. On this point, above almost every other, one may say with salutary rigour, "*fiat justitia.*"

. *Fifthly*,—"The analogy between the lawfulness of taking the life of another, in defence of our own life and property, and the doing so in defence of our character." Before touching on the particular point referred to in this part of the learned counsel's defence, I am induced for a moment to recur to the idea suggested in a preceding part of the learned counsel's speech, "that private duelling is more justifiable than public war*." Having already endeavoured to shew that duelling, on every ground, appears unjustifiable, it is only necessary that I should suggest the ground on which the question as to public war seems to differ. That war is in itself a

* Proceedings in Mr. Stuart's Trial, p. 140.—Taken from Boswell's Life of Johnson.

great evil is apparent; but it is to be feared that, in the present constitution of civil society, it is not wholly to be avoided. Any nation that might arm itself, as acting on the principle of total abstinence, in any supposable circumstance, from war, would probably, ere long, become an object of attack, and fall a prey to its less scrupulous and more rapacious neighbours. It will be of course understood, that what I hear speak of, is strictly defensive war; but it is not easy to see how, in the present condition of society, war to this extent could be wholly dispensed with*. Happily we are not left here to the wandering of our own imaginations. That the divine authority expressly sanctions the defence of life and property is evident. It is said, (Exod. xxii. 2.) "If a thief be found breaking up, and he smitten that he die, there shall no blood be shed for him." Whether the attack be made by an individual aggressor, or in public warfare, the sanction must be the same, as the injury probably would only differ in being of wider consequence. Many passages in the Old Testament sufficiently shew, that, in the abstract, war is not prohibited, as we, on the contrary, there find it on many occasions especially undertaken by divine command. At the memorable period when the angelic choir announced the glad tidings of "peace on earth and good-will towards men," the beams of a milder dispensation shone on the world.

* War, no doubt, though in its origin defensive, must be liable to lead to aggressive operations; and if such are not carried beyond the original intention of the contest, they cannot apparently be deemed unlawful.

But though the instructions which our Saviour imparted while on earth, by precept and by example, so eminently breathe in every line the purest principles of mildness and of love, they were every where characterized by marks of the most sublime of heavenly wisdom. Wisely and mercifully, war is not any where in the New Testament expressly authorized, neither is it expressly debarred *. There appears an evident toleration of it for a season, though in proportion as the influence of the Gospel spreads, and as our habits of thinking and of acting become moulded to its precepts, the thirst for war cannot fail to abate. When John the Baptist came to preach repentance, preparatory to the commencement of our Saviour's divine mission, it is stated, "And the soldiers likewise demanded of him, saying, And what shall we do? And he said unto them, do violence to no man, neither accuse any falsely; and be content with your wages." (Luke iii.) The exhortations that John addressed to all descriptions of persons, calling them to repentance and change of life, were generally very emphatic, and evidently his warnings were the dictates of the strongest feelings

* It seems evident that the expressions used by our Saviour, in his beautiful sermon on the Mount, in regard to the forgiving of injuries, while they establish distinctly the exclusion of revenge, and require the forgiveness of wrongs in all possible cases, where it can be done without manifest public injury, cannot be taken in an absolutely literal sense. There are in Scripture many other metaphorical expressions, which plainly shew the true meaning, without its being necessary to take them in a way strictly literal. This is so very clear, that any one who attends to the subject, and does not desire wilfully to pervert the Scripture, can scarcely err.

of sincerity and earnestness. But in the answer just now given, he made no allusion to any unlawfulness in the military profession, which assuredly he would have done, if it had been viewed as unlawful. In the interesting narrative that is recorded, (Luke vii.) of our Saviour healing the Centurion's servant, no intimation is given that the line of employment in which the Centurion was engaged, was incompatible with the precepts of the Gospel. Our Saviour, on the contrary, viewed him with particular approbation :—" When Jesus heard these things, he marvelled at him, and turned him about, and said unto the people that followed him, I have not found so great faith, no not in Israel." It is strikingly remarkable that the first Gentile convert made by any of the Apostles, was an Officer or Centurion in the Roman army :—" Cornelius, a Centurion of the band called the Italian band, a devout man, and one that feared God, with all his house, which gave much alms to the people, and prayed to God alway." (Acts x.) When Peter, obeying the voice of the heavenly vision, proceeded to the Centurion's abode, to impart the knowledge of the Gospel to him and his assembled friends, we do not find, while he expounded to them the principles of Christianity, that the slightest idea is suggested that the abandonment of his profession would be a duty. Our Saviour, when the young Ruler came to him with the all-important question, " What should he do to inherit eternal life?" put his sincerity to the test, by requiring him to relinquish his large and darling treasures. But no such test was applied—no such re-

quisitions, as to a change of life, appear to have been thought needful, in the cases referred to. We have practical examples that, according to the judgment of highly competent authorities, in recent times, the profession of arms is not at variance with the rules of conduct prescribed by Christianity. Several might be named, but I shall only mention particularly the names of Colonel Blackadder, Colonel Gardiner, and General Burn, as having risen to eminence, and having been known to many. These officers, during a long course of years, maintained a character of uniform consistency—a “walk and conversation worthy of the Gospel.” We may rest assured that no earthly consideration would have induced them to remain for a day in the army, if they had felt their doing so to be at variance with the claims of higher duty. That they had no feeling of this kind is evident, by their continuing in the military service till the end of their lives. No authority could sanction a thing in itself unlawful; but the example in this case, of persons of high principle and of admirable judgment, to whose mind the question must, in all its bearings, have frequently recurred, deservedly carries with it the weight of practical illustration.

I shall now shortly touch some of the observations contained under the head here referred to, of the learned counsel’s speech. With all feeling of respect, I must be permitted to say, that there seems a peculiar defect in this part of his argument. Having expressed this opinion, I am, of course, called on to state the grounds of it. We have seen in the quo-

tation above given, that the shedding of blood in defence of life or property, was sanctioned by the Mosaic law. The law of this country is founded on the same principle; and the learned Counsel has correctly stated different examples, to shew the extent to which the lawfulness of self-defence may be thus carried. The divine law, however, and also our national law, are very clear in establishing strong barriers against any wanton or unnecessary shedding of human blood; a dire extremity, which no rightly constituted mind would ever resort to but in the very last necessity. The law of Moses says, (Exod. xxii. 3.) “If the sun be risen upon him, (the thief,) then shall blood be shed for him.” The same principle holds good in the law of Scotland, which is peculiarly strict in its limitations on this point. Mr. Baron Hume states, “The general description of slaughter in self-defence is, that it is committed from necessity; in the just apprehension on the part of the slayer that his own life cannot otherwise be saved, and without alloy of any other less excuseable motive*.” Even in the case of an attempt at house-breaking, the law requires that all possible means should be previously used to avert the extremity of bloodshed. The great principle laid down is, that this is not justifiable, with regard to any personal injury, unless life be in actual danger.—“One, for instance, who is assaulted at mid-day, on the street, when he may safely retire and find shelter among the by-standers or otherwise; if, instead of doing so, he deliberately

* Criminal Law, vol. i. p. 333.

wait to receive the onset, and will not give back, he cannot allege that he kills purely to save his life: he kills to indulge his temper, or for the sake of his opinion, which, in the estimation of the law, is a false and wrong opinion *.” Numerous other quotations to the same effect might be adduced, all bearing on the same point. The law having very clearly defined the extent to which we may go, in taking the life of another in defence of our own life or property, so soon as we pass that limit we enter an unlawful and criminal ground. That the proposition laid down by the learned counsel so passes the legal limit, seems self-evident; its tendency being to widen to an undefined degree the right of individual bloodshed, and to leave to every one the power of exposing his own life, and of taking the life of his neighbour, with little other restraint than that which their mutual opinions or the fluctuating notions of society may happen to prescribe. It is of a totally different complexion from any of those cases in which the law has given its sanction to the shedding of the blood of our fellow creatures. Those cases all partake of the nature of a warding off instant and manifest danger, without which the spilling of human blood is murder. But the alleged plea of the learned counsel is founded on motives of vengeance, or caprice, or pride, the fear of the world’s frown, or undue solicitude for the world’s favour, passions of the mind which Scripture every where condemns and

* Criminal Law, p. 339.

forbids, and which God has severely denounced as showing a heart at enmity with Him : “ The friendship of the world is enmity with God : Whosoever therefore will be a friend of the world, is the enemy of God.” The system too which this implies, of every one becoming a judge in his own cause, “ snatching the balance and the rod,” and deciding how far he is to exert his means of defence, or how far carry his retaliation of wrongs, directly tends to the subversion of all order, and to throw society back into that state of chaos and ferocity, from which the operation of law has been gradually rescuing us. In opposition to this view, the learned counsel designates the idea of any one not being allowed to seek the blood of his opponent by duelling, as a “ proposition altogether monstrous * :” I hold the inverse of the opinion here expressed to be near the truth. This may do very well for a sort of rhetorical embellishment, but it will not go to establish a principle that is decidedly opposed by the laws of both God and man. The law referred to by the learned counsel, cannot bear out a case which appears so plainly at variance with every axiom of law, and every precept of religion †.

The learned counsel has strongly and truly stated, the painful consequences that are likely to follow any slowness to repair to the field of combat,

* Mr. Stuart's Trial, p. 153.

† I would have certainly felt considerable difficulty in differing from the learned counsel, so expressly on a point of law, if, in doing so, I had expressed my own sentiments merely, and not those of our best commentators.

when the voice of what is called honour, invites us there. The description appears scarcely over-coloured ; nor would I desire to underrate the difficulties of the struggle. In a mind actuated by a sense of duty and of principle, the conflict which must arise in such cases, is one of the bitterest that the human heart can be exposed to ; for, however right the motive may be,—though the individual sufferer would joyfully lay down his life in a virtuous cause, would shed the last drop of his blood in the service of his country, that will not entirely avail ; he must still be exposed to the shafts of a thousand envenomed tongues, if he hesitates to do, what he knows it to be impossible for him to do, without breaking the laws of his country, and, what is of higher importance, breaking the laws of God, and incurring his sure displeasure by an act of rebellion, which seems, if death ensues, to preclude the hope of forgiveness. The best, the strongest of minds, may be permitted to feel acutely on such an occasion ; for the ties that have long bound us to society, in which we number perhaps, dear and valued friends, cannot experience the disruption now to arise, without many pangs. No one can ever be equal to such an encounter, who is not impelled by the most powerful sense of religious obligation : it is this, and this only, that, in the emergency, can be an unfailing guide, a compass to steer through the tempest that howls louder than any Atlantic blast, and that makes all the waves and billows to pass over. When a crisis of this kind ensues, every one under the influence of decided Christian principle, must

feel it to be a trial from which they are not at liberty to draw back. The pains of martyrdom are not greater, but, whatever they are, they must be encountered. There must here be no reservation, no qualification ; the rules laid down by Scripture on this point are quite decisive, and we must forfeit all claim to the regulation of our conduct by that standard, if we willingly deviate from the path that lies plainly marked before us. Our Saviour, in varied language, repeatedly tells us, “ He that loveth father and mother more than me, is not worthy of me ; and he that loveth son or daughter more than me, is not worthy of me ; and he that taketh not his cross, and followeth after me, is not worthy of me *.” God is a merciful God : He “ knows our frame and remembers that we are dust.” He will not lay on us a burthen heavier than we can bear, or than he sees to be needful for us ; but, on the other hand, he will not accept a divided heart, one divided between devotion to the world and Him : “ My son, give me thy heart,” is the divine requisition, and must be complied with, or we have “ no part nor lot in the matter.” Trials of this kind, severe as they undoubtedly are to flesh and blood, were no doubt distinctly foreseen in the councils of Omnipotence, for while we are warned that God “ will have no pleasure” in them that draw back, we are at the same time encouraged by the most animating hopes to persevere “ and not to faint.” There is indeed no subject on which the Scripture

* St. Matthew, x 37, &c.

more enlarges than on this. “Blessed are ye when men shall revile you, and persecute you, and shall say all manner of evil, falsely for my sake. Rejoice, and be exceeding glad; for great is your reward in heaven,” St. Matt. v. 11. “If ye be reproached for the name of Christ, happy are ye; for the spirit of glory and of God resteth on you: on their part he is evil spoken of, but on your part he is glorified,” 1 Pet. iv. 14. “The Lord is good, a strong-hold in the day of trouble; and he knoweth them that trust in him,” Nahum i. 7. “If ye suffer for righteousness sake, happy are ye; and be not afraid of their terror, neither be troubled,” 1 Pet. iii. 14. “Blessed are ye when men shall hate you, and when they shall separate you from their company, and shall reproach you, and cast out your name as evil, for the Son of Man’s sake. Rejoice ye in that day, and leap for joy; for behold your reward is great in heaven,” Luke vi. 22. I hope it will not be supposed, from any observation I may have now made, that I have the least wish to afford any thing of a cover, or to erect any screen for what is usually called a cowardly disposition. It must be obvious that the description of character I have endeavoured to represent, is altogether of a different tone and temper from this, partaking, in fact, of a heroism of mind such as the mass of society know nothing of. It would be infinitely easier to engage in many duels, than to pass such an ordeal as I have alluded to. Let it be well understood that none can have claim to exemption on Christian grounds, who have not in their general conduct previously shewn some

conformity to the model they profess to go by. Any whose usual habits of life had been much at variance with this, whatever other reasons it might be their duty to urge, could with little propriety urge religious scruples as a plea for holding back, when called on in the usual way, to yield obedience to the laws of honour, so to apply the term*.

There is a distinguished class of the community who are exposed to peculiar difficulty by the practice of duelling: I mean the officers of our army and navy. They are, by their habits of life, necessarily brought more in contact with the practice; and, in addition to the imperative obligations they lie under against recurring to it in common with all others, the articles of war, which they on their oath are bound to observe, declare against it, and heavy penalties are attached to the infringement of them. In defiance of all this, every one knows the consequences that follow, if an officer, however sincerely conscientious his motives, refuses when the occasion occurs, to offer or to accept a challenge. The proscription that ensues, is what few, very few individuals indeed, have virtuous principle or resolution sufficient to encounter. Can any situation be more painfully trying than that in which a brave officer may be placed, who, uniting to a gallant mind a strict sense of the duty he owes to God and to his king, feels himself compelled to refuse an unhallowed obedience to usages which he knows to be criminal, and who,

* I wish to guard against its being at all supposed that any one is justified, or in the least warranted to engage in a duel, because he makes no particular religious profession.

in doing so, is called to brave the scorn and contumely of most of his associates. I scarcely know any situation that can, in cruelty of circumstances, be compared with it. It is indeed being tried in a furnace, "heated seven times more than it is wont to be heated." Neither does it appear that any individual, whose severe lot it may be to be thus proved, is at liberty to desert the station of life in which Providence has seen fit to place him. He is, on the contrary, bound by the most solemn obligations to hold his ground to the utmost. By doing so, in a spirit of gentleness, combined with firmness, it is probable that, under the Divine blessing, he may be enabled to disarm hostility, to conciliate his adversaries, and to bring them to a sense of their fatal delusion. But if this should fail, he knows that he has an all-powerful Friend, "who careth for him," and who has said, "I will never leave thee, nor forsake thee." To Him he may safely commit his cause, as "unto a faithful Creator." Such a trial, arduous as it is, is far from being destitute of consolation or of encouraging hope. There is something unspeakably consolatory in the conscious feeling that we are marching firmly in the path of duty,—and any one placed in the supposed circumstances, should turn with reviving thought to the prospect of his honourable example being widely diffused, many being encouraged perhaps by the firmness of his individual conduct, to avow sentiments which they would not have otherwise ventured to disclose, still less to act on. It is an interesting thing, what greatly distinguishes the age

in which we live, to see many officers, both naval and military, who now dare to be singular on such points, and who now live under impressions little known a few years ago. This number is every year on the increase; and nothing will have a more powerful influence in quickening the extension, than living instances of calm, consistent regard to our first duties, united with a noble superiority of mind, rising above all considerations of the personal inconvenience and sacrifices that such steadfastness may entail*. Heavy, indeed, is the reproach that lies at the

* Instances of officers and others who have refused challenges have from time to time occurred. Colonel Gardiner, who was killed fighting bravely in his country's cause, on one occasion refused a challenge, observing, "I fear sinning, though, God knows, I do not fear fighting." It is mentioned in the life of Colonel Blackadder, that he refused a challenge, and having done so, immediately applied to the Duke of Marlborough to be appointed to head an attack of some of the enemy's works, of a desperate nature. Cockburne's History of Duelling contains an interesting narrative of a French officer, of the name of Renty.—"He was born in the year 1611, at Beni, in the Lower Normandy. He was the only son and heir of Charles de Renty, a Gentleman both of a good estate and of an ancient noble family. The young de Renty, as he had good natural parts, so there was given him a virtuous, liberal, and suitable education, which rendered him a very accomplished Gentleman, and procured him such reputation, that he was chosen, even very young, a member of the states of Normandy assembled at Ruen. A little while after, France being engaged in the war of Lorraine, and it being then judged not honourable for a Gentleman to loiter at home, when the service of his king and country called him to the field, Monsieur Renty went into the army, where he was placed at the head of a troop, in which were divers young Gentlemen. He very soon got a reputation among the Generals and all the Commanding Officers, as well as others, by studying to oblige every one. But when Mons. Renty became a soldier, he did not lay aside the character of a Christian; he owned the obligation to preserve it in the camp as well as elsewhere; and, as he is described by the author of his life, he did it every where with an un-

door of the government of our country, that unjustifiably allows its officers, and subjects generally, to be so unnecessarily exposed to such severity of

usual care and strictness, giving a good example to all, and keeping a strict discipline over those under his command, which made him most gracious wherever he was quartered.

“ But to give an instance suitable to the subject of this Discourse, while Mons. Renty was in the army, there happened a difference between him and another Gentleman, who stood much upon what is called the point of honour. It was first carried before the General Officers, who determined it in Mons. Renty’s favour ; but the other would not rest in that—nothing would give him content but a satisfaction by the sword, and so he sent a challenge. Mons. Renty told him that brought it, ‘ That the person he came from was much in the wrong, for he had given all the satisfaction which in justice and reason could be demanded.’ But the other still pressing and repeating his challenge, and that too with some insolent and provoking language, Mons. Renty returned this answer,—‘ That he could not accept of the challenge, since God and the King did forbid it ; he had no fear of the other, but he feared God and dreaded the offending him. That he would go every day abroad, as he was wont, wherever his affairs should call him, and if any attack should be made upon him, he would make the other to repent it.’ This answer is the more remarkable, that it came from a young man that intended to raise himself to preferment by the sword. Now the other quarrelsome person, seeing it in vain to attempt the drawing Mons. Renty to a formal duel, he took an opportunity to set upon him when attended with one single servant. The consequence was, that both the quarrelsome Gentleman and his second were wounded and disarmed, after which, by the assistance of his servant, he carried them privately to his own tent or lodging, where he himself dressed their wounds, comforted them with wine, and dismissed them with their swords, never boasting of the advantage which he had over them, nor so much as speaking of it to any, or ever mentioning it afterwards to his servant who was present. When other differences happened, he used to say, that there was a great deal more courage and greatness of mind in bearing an injury for the love of God than in returning it, and in suffering than in revenge, because the one was more difficult than the other ;—that a bull had indeed courage, but it was brutal, whereas, ours ought to be rational and Christian.”

trial, to such a fearful contest between a strong sense of duty, and the dread of worldly shame. There is the less excuse, as the evil, though of long continuance and deeply rooted, is one which it would not apparently be very difficult to rectify. I shall, however, shortly take the liberty of offering some farther suggestions on this very important part of the subject.

Sixthly, and Lastly,—The small number that have fallen in duels in modern times, compared with times more remote. The number that were killed in duels, in this kingdom, in our late king's reign, is stated to have amounted to between 60 and 70 persons. This number is happily small, compared with the enormous loss of lives that took place from that cause, about two centuries ago. But the view of this number of victims can afford no just ground of satisfaction, when we consider the prodigious improvements that have taken place in the general tone and habits of society in that time,—and when there appears little reason to doubt, that if the laws wisely enacted against duelling at that distant period had been duly enforced, the practice that has proved the source of so many woes in most of the nations of Europe, might have been long since wholly exploded. Comparatively limited, as the number is that have lately fallen, enough have perished to produce a wide mass of human misery; and can we contemplate without sorrow, the circumstance of so many of our fellow-creatures having been hurried into eternity, in an act of open rebellion against their Maker, and exposed to the fearful consequences that await all

that die in a state of hopeless impenitence? With those that seriously believe the Scriptures, there cannot be two opinions on this subject. Even the infidel, if he thinks at all, must have many doubts. On the most favourable computation of the sceptic's creed, there must be much danger as to future consequences; and how little does it accord with the most ordinary principle of philanthropy, to be hazarding the eternal welfare of others, as well as our own, in the way that occurs in every duel, on a chance that is less than the turn of the die—on a contingency on which few would wish to stake the least portion of their earthly property? Surely enough, more than enough, of blood has now streamed at the altar of Fashion's idol; and surely it is now time to heal those wounds, that a senseless, barbarous usage has so long and wantonly been inflicting on the world*.

Having thus, however imperfectly, endeavoured to shew the criminality of duelling, in every view in which it can be considered—as baneful to society—as a manifest violation of the law of our country—as an act peculiarly offensive and sinful in the sight of God,—and as a practice that cannot fail to bring down the Divine wrath on its abettors, it will be proper now shortly to consider whether any, and what remedy, can be found for so glaring an evil.

* It is to be recollected that a great portion of our last king's reign was spent in war, at which time, from obvious causes, duelling does not occur so frequently as during peace. The number of duels, accordingly, appears to have increased materially since the termination of the war.

To some it may appear that it has now struck such deep root, as to leave no hope of its being eradicated. It may seem to be now so interwoven with all our habits of thinking, with all the usages of life, as to have become almost, so to speak, a component part of society, and essential to its existence. If this is the view in which duelling be considered, perhaps it might be not improperly compared to the parasitical plant that, entwined around the noble stem, gives it a delusive show of support, while in truth it is corroding its substance, and sapping its foundation. If there be any correctness in the observations that have been stated, a conclusion altogether opposite from such a supposition as the above, must be the true one. I am fully satisfied that the chief difficulty in getting rid of duelling consists in our imagination. As in the case of that deception that sometimes attends the ocular vision, the object, in being viewed through a fallacious medium, appears of exaggerated height,—but, if firmly approached, it will be found to dwindle into a thing of small account. A substance that appears in the eye of many, of impenetrable strength, will, if resolutely grappled with, prove little more than the evanescent shadow. The causes of duelling are of no occult nature,—they lie very clearly developed before us; and if we can remove the causes, the evil will gradually cease. One of the most prominent of those causes, is undoubtedly that already alluded to, the extreme laxity with which the laws against duelling have been administered. It was this laxity which led to the failure of the edicts repeatedly issued in

the reigns of Henry IV., and Lewis XIII. of France; and it was the adoption of an opposite course, in the undeviating enforcement of the edicts issued in his reign, that enabled Lewis XIV. to succeed in the great measure of abolishing duelling in his dominions. With this salutary example in view, our laws on this point have continued from one reign to another to be administered, with few exceptions, with criminal remissness; and the stream in its descent bearing along a continued accumulation of new precedents, every stage in its progress must have increased the difficulty of rectifying the evil, which will probably continue till decisive means, similar to those adopted in France and other countries, are here resorted to*. I would point out also a matter that bears closely on this subject, as strongly influencing the public mind in favour of duelling, and which, therefore, claims peculiar attention: I mean the decidedly antichristian principles on which education is usually conducted. It is observed by a lively writer, (Soame Jenyns,) "Nothing, I believe, has so much contributed to corrupt the true spirit of the Christian institution,

* An interesting anecdote is recorded in Harte's history of Gustavus Adolphus of Sweden, of the successful means used by that great Prince, to stop the practice of duelling in his army. It seems that, in Austria, Saxony, and Poland, similar means have been at different times used. But it must be recollected that, under despotic governments, the success of all regulations essentially depends on the personal character of the Sovereign. It is honourable, in a high degree, to the Princes in question to have made the attempt; and though the operation of their salutary laws may not have been permanent, the failure cannot be imputed to them. In this country the case would be altogether different.

as that partiality which we contract, from our earliest education, for the manners of Pagan antiquity ; from whence we learn to adopt every moral idea which is repugnant to it ; to applaud false virtues which that disallows ; to be guided by laws of honour which that abhors ; to imitate characters which that detests ; and to behold heroes, patriots, conquerors, and suicides, with admiration, whose conduct that utterly condemns." That the general system of our modern education is much more adapted to such a meridian as Heathen Rome once was, than to a land professedly Christian, must be painfully evident to every one who considers the subject with a just and unbiassed judgment. There are some happy exceptions,—some, in whose case we find united the polish of classical attainment with the still higher polish of Christian instruction, and the stamp of the Christian character. But such instances are rare, and according to the usual routine of youthful training,—according to the usual estimation of the world, a store of good scholarship is judged not an unreasonable set-off against any deficiency of Christian knowledge—of that knowledge by which alone our own conduct can be justly or safely moulded, and according to which it ought to be our continued aim to shape the conduct and character of those committed to our care. Our Saviour's commandment, " Search the Scriptures," instead of being looked to as the first of all objects, and the duty it imposes the first of all obligations, holds usually a place altogether secondary in modern tuition. Some superficial instruction of this kind may be imparted in

early youth, but, in a large proportion of cases, it extends little beyond the first rudiments of domestic education ;—its hold over the mind is feeble, and seldom has any permanency. The system fatally pursued in our public schools, and often too under private tutors, leaves little leisure, and less inclination, for the culture of Christian views, and the operation of Christian principle ; and it need excite no wonder if, in the midst of the bustle, temptations, and trials of future life—any early seed that may have been sown, even in circumstances more than usually favourable, be choaked as if with briars and thorns, and yield no return. It should occasion no surprize if, in such circumstances, the requisitions of Scripture are little regarded—have little influential effect in the mingled intercourse of human life ; and it will be well if the vague, confused notions, that have been imparted, do not practically lead more to scepticism and profane levity, than to the establishment of Scripture as the standard of our actions and the guide of our lives. Constituted as society now is, it cannot be much expected that, in the midst of those tumultuous unsubdued passions that so rage without and within, the “still small voice” of Christian principle should obtain any very favourable hearing. It cannot be expected that it should “ride in the whirlwind and direct the storm.” It is to be presumed that the practice of duelling seldom forms directly, or avowedly, a part of modern education ; but that the ideas usually instilled into the juvenile mind have a direct tendency to foster and encourage the growth of those dispositions and habits that

form the root of the practice, must be obvious. The criminality of duelling is rarely pointed out; it is, on the contrary, usually spoken of as an expedient thing, not undeserving of applause; or, at least, what every one must be prepared to encounter when needful. The duty of curbing our worldly temper, of controlling especially the angry passions of pride, resentment, and revenge, and such like, is not impressed with much earnestness; while, on the contrary, the necessity of holding high our characters in worldly estimation; of eclipsing others in the race of worldly distinction; and, above all, of resentfully avenging personal wrongs, are not unfrequently spoken of as matters of course, or as themes of eulogium. The question of education is too wide a field to be enlarged on here, even if I were competent to the task*. I have, therefore, done nothing more than give a hasty glance to a subject which has a close connection with that at present under our view. It is a solemn obligation that rests on all, in any way entrusted with the care of the rising generation, to see that this sacred duty is discharged on Christian principles; and in so doing, they cannot fail to point out duelling as a crime, in every sense of the word, of the most deadly nature, involving suicide and murder, and as such, though it may escape punishment from the laws of man, the sure object of the divine wrath and vengeance. There

* I feel the less called on to enter on so extended a discussion, as a respected friend has already made it the object of particular consideration, in a paper, of which I hope the public will ere long have the benefit.

cannot be a doubt that, if the minds of young persons, instead of being poisoned with the pernicious sentiments which they are permitted at present to imbibe, ideas which “grow with their growth, and strengthen with their strength,” were awakened by times to a sense of the magnitude of the crime of duelling,—were brought by early warning to see it in its true turpitude, this would have a powerful tendency gradually to operate a mighty change in the current of public feeling, and to establish better principles in our country. Fearful then must be the responsibility of those parents and teachers who, having all this in their power, shew themselves utterly regardless of the welfare of those committed to their charge, in their nearest interests, allowing them to grow up in those habits that lead to the deliberate shedding of their own blood, or the blood of others, in unhallowed quarrels. It is impossible that blood so shed should not, hereafter, plead trumpet-tongued against those who, from criminal remissness, may have been the true authors of the calamity. Parents and teachers may, in the truest sense of the word, be designated as *watchmen*; and to them, and those whom Providence has committed to their superintendence, may be truly again applied the words of the prophet, “If the sword come, and take away any person from among them, he is taken away in his iniquity, but his blood will I require at the watchman’s hand.”

It seems probable that the relaxed vigour of the laws against duelling cannot be effectually revived without the interposition of Parliament, and the

legislative wisdom may perhaps see fit to give still farther strength to the intention of these laws, by other measures adapted to the present habits of society. Possibly the establishment of a court or courts of honour, on a somewhat similar principle as that adopted in France, under Lewis XIV. may be thought expedient. I am aware that a publication that ranks high in general estimation, though in no respect higher than is due to its great merit *, refers to an expedient of this nature in terms that do not hold out sanguine expectations of its success. But we must recollect, that, at the period of the publication of that interesting work, its eminent author stood almost alone, or was one of the very few of those engaged in the duties of public life, who feared not to confess our Saviour, and to act on the precepts which the word of God prescribes for our guidance. Since that time the tone of religious feeling in this country has undergone a manifest change ; and though the number of those who take Christian principles as the rule of their conduct, be still comparatively small, it is much increased within as well as without the walls of Parliament. Any proposition of the nature suggested would, therefore, it may be supposed, be now brought forward in different circumstances, and with greater confidence of success, than it could have been twenty-five or thirty years ago. Perhaps it may be suggested, as opposing this expectation, that those who are by their stations the framers and the guardians of our laws, are, in re-

* Mr. Wilberforce's Practical Christianity, p. 142.


gard to duelling, not unfrequently among the number of the boldest offenders, and that it cannot, therefore, be expected that they should be very solicitous to impose fresh restrictions on their own misconduct. This, indeed, is a truth—a melancholy truth; and if any thing could more than another clearly demonstrate the corrupt, iniquitous nature of the practice, it would be that imaginary necessity it thus lays on those in public station, of criminally violating and betraying those laws which it is their first duty to protect*. It cannot be denied, that such persons, peculiarly exposed as they must be to the acrimony of angry opponents, must be often placed in circumstances of much difficulty; and though no consideration can justify the deliberate preference, that in every case of duelling is exhibited, of the favour of man before the favour of God, it is surely to be lamented that such collision should ever exist, and that the worst passions of the heart should thus be permitted to pollute, at the very fountain, that stream of law and of justice that ought to flow pure through our land.

Those public characters who have engaged in duels, or who may be still ready to stand forward in such encounters, cannot be without considerable misgivings; and though they may not possess that strength of religious principle, by which alone, in a right cause, we are enabled to bid defiance to the

* Let it be perfectly understood, that this is said without any view to any particular side or party.

world's obloquy, it is likely that they would not unwillingly hail any favourable opening by which they might free themselves and others from the painful alternative, the difficult struggle, which so often ensues. It is usually found in all questions, connected as the present with the moral and religious interests of the country, that it is the country itself that must take the lead; and it is on the expression of the public sense, that the acts of the legislature are usually in such cases founded. I apprehend that no better mode could be devised of making known this sense, than by a combined declaration similar to that made in France, by persons of the first rank, against the practice of duelling, at the period of its abolition in that country. That declaration was apparently more founded on considerations of temporal expediency, than on those of religious principle; yet the latter, as it has been my endeavour to shew, constitutes in truth by much the strongest ground. Favoured as this country is with the bright beams of gospel light, it cannot be doubted that there are many who feel the force of this truth, and who cannot be insensible that their duty to society, but still more their duty to God, imposes on them the obligation of testifying their sense against that open violation of the laws of both God and man, that the practice of duelling so clearly involves. Such a declaration as I refer to, would afford to all of this mind, an opportunity of making known their sentiments; and if, in France, measures of the like kind, but resting on a basis comparative-

ly weak, was eminently prosperous, the most favourable consequences might be anticipated from such a course in this country, strengthened, as it would be, by all the additional motives, by all the higher considerations here connected with it. Let it not be said that the number who are called on to engage in duels is comparatively small, and that, therefore, the act of joining in any public association is an unnecessary anticipation of a difficulty which may never occur. Duelling is one of those things regarding which it is essential that we should calmly make up our mind, and come to a fixed understanding before the trial overtakes us. It must be an unfavourable moment to deliberate, when under the influence of angry passions, and irritated feelings; and, unless we have previously established a settled principle in our hearts, and are decided as to its utter unlawfulness, when the conflict arises, worldly principles will seldom fail to predominate. Mr. Wilberforce justly observes, "In the judgment of that religion which requires purity of heart, and of that Being, to whom, as before remarked, 'thought is action;' he cannot be esteemed innocent of this crime, who lives in a settled habitual determination to commit it when circumstances shall call on him to do so. This is a consideration which places the crime of duelling on a different footing from almost any other; indeed, there is perhaps no other which mankind habitually and deliberately resolve to practice whenever the temptation shall occur. It shews also, that the crime of duelling is far more general in the higher classes



than is commonly supposed, and that the whole sum of the guilt which the practice produces, is great beyond what perhaps has ever been conceived!" In these circumstances, a declaration is additionally recommended by the obligation that it will call for of self-examination; and by the unequivocal expression which it will require as to who are, on this question, prepared to adhere to the commandments of God. The combination, too, of numbers, is at all times powerful in its influence; and it is no small advantage that, on this occasion, would arise, that many may be thereby encouraged to avow opinions, which, singly, they would shrink from the difficulty of hazarding.

Lest any latent impression should still remain, as to the difficulty of encountering an opinion so long established as that in favour of duelling has been, it may be well to consider how fluctuating public opinions and public usages generally are. Within the last thirty or forty years, hard drinking and hard swearing, were generally considered as the characteristics of gentlemen, and somewhat essential to give due effect to the name. But from a gradual change of manners, and a progressive, though often imperceptible diffusion of the influence of religious opinion, the impropriety and criminality of those practices are now felt by many who make little profession of religious principle; and, to the credit of the present times, they are every day sinking more into disuse. At the period when the abolition of the Slave Trade in this country was first agitated, the idea seemed

to a great proportion of the kingdom visionary, and the attempt hopeless. But in this enlightened nation, the united voice of religion and humanity, if duly exerted, will seldom long be exerted in vain; and so entire is the change that has been brought about, that scarcely an individual is now to be found in this kingdom to advocate the cause of slavery. The struggle was long, arduous, and memorable; but the triumph which truth finally achieved, was thereby only rendered more conspicuous,—and to this country has belonged the unspeakable glory of setting the example of suppressing that cruel traffic. While to this continues to be added the unwearied exertion of our national influence, in awakening the torpid sensibilities of other states as to the miseries of so large a portion of our fellow creatures, and our successful endeavours to impart the blessings of civilization and Christian knowledge to those who, not many years ago, were considered by many in our country as stamped by the hand of Heaven with hopeless inferiority, and scarcely ranked above the level of the brutes of the field. In referring to these events, it is not possible to disconnect with them, the name of the distinguished personage lately alluded to. If ever an individual deserved to be called the friend of Africa, the benefactor of the human race, Mr. Wilberforce stands unrivalled as that person. ✓ May we not be permitted to hope that, on this occasion, the energy of his talents, and the powers of his eloquence, will again be put forth with like success? The cause would be comparatively easy; and

it would be surely a gratifying thing to see this venerable patriot, as the close of his public career draws on, enabled to add to his long and undeviating course of usefulness one more act, of which the effects would extend to the world's limits—one more benefit, for which future generations would venerate and bless his name.

FINIS.

THEOLOGICAL WORKS,

RECENTLY PUBLISHED BY

WAUGH AND INNES, HUNTER-SQUARE.

REMARKS,

ON THE

INTERNAL EVIDENCE FOR THE TRUTH OF REVEALED RELIGION.

BY THOMAS ERSKINE, Esq. ADVOCATE.

Sixth Edition. 12mo. 3s. 6d. bds.

AN ESSAY ON FAITH,

BY THOMAS ERSKINE, Esq. ADVOCATE.

Third Edition, with Corrections and Additions, 12mo. 3s. bds.

TESTIMONIES TO THE TRUTHS OF NATURAL AND REVEALED RELIGION,

Extracted from the Works of Distinguished Laymen.

BY THE REV. JAMES BREWSTER, Minister of Craig.

12mo. 5s. 6d. bds.

AN INQUIRY INTO THE BOOKS OF THE NEW TESTAMENT.

BY JOHN COOK, D.D.

Professor of Divinity in St. Mary's College, St. ANDREW'S.

8vo. 12s. bds.

CHRISTIAN THEOLOGY;

Or a Connected View of the Scheme of Christianity, in which the Facts and Statements of Scripture are Examined, and the Doctrines and Inferences Deducible from them Illustrated and Enforced.

BY THE REV. JAMES ESDAILE,

Minister of the East Church Parish of Perth.

8vo. 10s. 6d. bds.

EDINBURGH:

PRINTED BY BALFOUR AND CLARKE.

Wm. Bennet
1822

REPORT

OF THE TRIAL BY JURY,

PROFESSOR JOHN LESLIE

AGAINST

WILLIAM BLACKWOOD,

FOR LIBEL IN "BLACKWOOD'S EDINBURGH MAGAZINE."

REPORTED BY WILLIAM BENNET, W.S.

JULY 22, 1822.

EDINBURGH :

PRINTED FOR W. AND C. TAIT, PRINCE'S STREET;

LONGMAN HURST, REES, ORME, & BROWN, LONDON;

AND WILLIAM TURNBULL, GLASGOW.

1822.

THIS Report has been prepared with the greatest care and accuracy, under the sanction of Professor Leslie's Friends.

Printed by Balfour & Clarke,
Edinburgh, 1822.

INDEX.

Summons at Mr. Leslie's instance	Page 1
Defences for Mr. Blackwood	2
Procedure in Court of Session and Jury Court . . .	ib
Issues	16
Trial fixed,—and motion for adjournment, &c. . .	25
List of Witnesses for the Pursuer	26
————— for the Defender	31
The Trial,—Sederunt and Preliminary Procedure . .	31
Mr. Moncrieff's Speech for the Pursuer	37
Evidence for the Pursuer	61
Rev. David Dickson	ib
Rev. Dr. David Scott	71
Dr. Marcet	81
Dr. Thomson	81
Dr. Dewar	81
Mr. Cadell	91
Mr. Tait	91
Mr. Aitken	91
Mr. Miller	97
Mr. Forsyth's Speech for the Defender	97
Lord Chief Commissioner's Charge to the Jury . .	141
Verdict	161
Bill of Exceptions taken for the Defender	161

REPORT, &c.

THE present is an action of Damages brought by the pursuer, Mr. Leslie, against the defender, Mr. Blackwood, under the late statute 59. Geo. III. Cap. 35. by which it is provided, that all actions brought before the Court of Session, where the conclusion shall be for damages and expenses only, shall be forthwith remitted to the Jury Court for trial, upon Issues to be adjusted in that Court, in the manner prescribed by the Act.

The Summons is in the following terms :

SUMMONS.—George, &c. Whereas it is humbly meant and shewn to us, by our lovite John Leslie, Professor of Natural Philosophy in the University of Edinburgh, That William Blackwood, Bookseller in Edinburgh, has, for some time past, conceived an unjustifiable rancour and malice against the pursuer ; in gratification of which, he has had recourse to the most false and abominable libels against him ; and, in particular, has been in the practice of publishing, in a work, entitled ‘ Blackwood’s Edinburgh Magazine,’ and of which the said William Blackwood is the publisher, the most foul and atrocious calumnies against his private and public character, as a man, and as a professor : That, actuated by this motive, and by a profligate and wanton disregard of his feelings and reputation, the said William Blackwood has, in various parts of that work, to be more particularly condescended upon in the course of the process to follow hereupon, but especially in the 35th Number, at pages 502 and 503 ; the 40th Number, at page 355 ; and the 44th Number, at pages 190, 208, 209, and 222 ; represented, and held him out to the public, as a person distinguished by “ *insolence*,” “ *ignorance*,” “ *impudence*,” and “ *impertinence* ;” as being an “ *enfant perdu* ;” as being “ *actuated by a hostility to*

*the language of revelation, simply because it was so ; as “ going out of his path to recommend an impious work ;” as “ going out of his path to cast an ignorant sarcasm on the language of the Bible ;” as “ being an object of suspicion to those who hold the Scriptures in honour, or impiety in detestation ;” as being an impostor and dishonest ; and as being one of the public teachers of Edinburgh, by whom strangers, who come to the University here, have “ their religious principles perverted,” “ and their reverence for holy things sneered away,” and as being one to whom the application of these terms and statements was but his “ due :” That these false, scandalous, malignant, and unprovoked aspersions, are highly injurious to the feelings, character, interests, and usefulness of the pursuer ; and have not only been persevered in for a very long time, but it has been plainly and repeatedly announced, in the foresaid publication, that they are to be continued : That, in order to prevent this threat from being carried into effect, and in reparation for what he has already suffered, and may hereafter suffer by the foresaid libels, the pursuer is entitled to exemplary damages : And although the pursuer has often desired and required the said William Blackwood to make him reparation for what he has suffered, or may suffer, by the foresaid false, scandalous, malignant, and unprovoked aspersions and libels, as well as to give up the names of the author or editor thereof, or of both, under certification that his concealing, or, in other words, protecting him or them, should be held as a great aggravation of his misconduct : Yet he refuses, at least postpones and delays so to do : Therefore, the said William Blackwood, defender, OUGHT and SHOULD be DECERNED and ORDAINED, by decree of our Lords of Council and Session, to make payment to the pursuer of the sum of £5000 Sterling, or such other sum, less or more, as our said Lords shall modify, in name of damages and reparation, or *solatium*, for the injuries which he has suffered, or may suffer, as aforesaid, together with the sum of £300, or such other sum as shall be modified by our said Lords, of expenses of process, including all extrajudicial expenses incurred by the pursuer thereanent, and that over and above the expense of extracting the decree to follow hereupon, conform to the laws and daily practice of Scotland, used and observed in the like cases, in all points, as is alleged —Our will is herefore, &c.*

Dated and signeted the 13th day of December, 1820.

This Summons was called in Court on the 19th Jan. 1821, and appearance entered for the defender, for whom the following defences were lodged :—

DEFENCES for WILLIAM BLACKWOOD, Bookseller in Edinburgh, in the action against him at the instance of JOHN LESLIE, Professor of Natural Philosophy in the University of Edinburgh.

The present action is clearly irrelevant, and the defender is confident that it will accordingly be dismissed.

The defender must, in the *first* place, observe, That the present summons is framed in the most extraordinary and preposterous manner, and with a total disregard of the plainest and most necessary rules, by which, in actions for defamation, the summons must be framed. The defender believes, that there is no instance in the record of Court of a composition similar to the present summons.

The summons commences by stating, that the defender has “for some time past conceived an unjustifiable rancour and malice against the pursuer :” Unless proved by relevant and sufficient facts, this vague allegation clearly goes for nought. Then the summons proceeds as follows : “In gratification of which,” (the said rancour and malice,) “he has had recourse to the most false and abominable libels against him ; and, in particular, has been in the practice of publishing, in a work entitled ‘Blackwood’s Edinburgh Magazine,’ the most foul,” &c. The summons has been so framed, as to create a belief that the defender had been instrumental in attacking Mr. Leslie in a variety of other publications, and that the Magazine has been selected only as one instance, of numberless publications in which the defender had gratified his alleged “rancour and malice.” In point of fact, this insinuation is not less irrelevant than it is false. The summons particularises only three numbers of the said Magazine, and any more general allegation is wholly inadmissible, and is moreover positively untrue.

This, then, being the case, the ground of action is in fact narrowed to the observations respecting the pursuer’s publications, contained in the parts referred to in the three numbers described in the summons of the foresaid Magazine. The relevancy of the action must be determined with reference to the facts specified in the summons.

The *next* peculiarity in this summons, is the extraordinary

and unprecedented circumstance in the law of libel, that the summons does NOT SET FORTH ANY ONE OF THE PASSAGES WHICH ARE THE ALLEGED GROUND OF ACTION, or *in which the pretended calumnies and libels are contained*. The defender submits, that such a summons cannot be entertained in Court. In every action of damages, a relevant ground of action must be stated. In an action of damages for alleged defamation, contained in the passages of a critical work, the passages containing the pretended libels ought to form part of the summons,—else how can the relevancy of the action be ascertained, or the limit be drawn between wanton, rancorous, and malicious attacks upon the one hand, and the fair, nervous, and indignant language of literary discussion on the other; the exercise of which is one of the privileges of the freedom of the press, and the *free* exercise of which is essential to chastise the rashness, and to expose the ignorance, of presumptuous and dogmatical assertion, and to restrain the literary self-sufficiency and arrogance, which, without even elementary knowledge, presumes to condemn and sneer at that, which the whole Christian world have uniformly admired.

In the present case, the observations and comments which are the ground of the action of damages, are all contained in the course of remarks upon opinions, doctrines, and assertions published by Mr. Leslie in literary or philosophical works. What a person so publishes, may be highly beneficial, or extremely prejudicial, to the interests of truth and morality. The publication is the property of the public. The author hazards his reputation upon the work; and he is liable to be arraigned at the bar of the great tribunal of free discussion, for ignorance, arrogance, or infidelity. Of all these, and similar offences against good taste, and the cause of truth and religion, an author *may be* guilty; and for all such offences, he *ought* to receive the chastisement which they deserve, and which it is one of the privileges and objects of a free press to apply.

Before the relevancy of any action of damages, at the instance of an author whose publication is thus commented upon, can possibly be considered or determined, it is absolutely necessary that the passage containing the observations which are alleged to be libellous, should be recited and set forth in the summons; otherwise no distinct, rational, or relevant ground of action is condescended upon; and the Court cannot possibly judge whether the passages complained of are in fact merely the chastisement which the publications of the

pursuer called for. In the present summons, the pursuer extracts from the passages in question, and accumulates together a number of epithets and phrases, which he says are therein applied to himself; but he does not set forth the passages of the work in which these epithets and phrases are found;—he studiously avoids stating the grounds of the charges which are made against him;—he does not mention the proofs which are given from his own publications in support of these charges;—and he does not shew *in what manner* the different epithets and phrases of which he complains are severally introduced and applied. But this mode of framing a summons in an action for defamation, is equally absurd and unprecedented, and is intended to evade the important question of Relevancy which arises in the present case.

The pursuer says, that he is held out as a person guilty of “insolence,” “ignorance,” “impudence,” and “impertinence;” as being “actuated by hostility to the language of Revelation, simply because it was so;” as “going out of his path to cast an ignorant sarcasm on the language of the Bible,” &c. &c. Of all these charges an author *may be* clearly guilty in his publications;—he *may* exhibit insolence and ignorance;—he *may* shew a spirit of hostility to the language of Revelation, unaccountable on any other ground than the supposition that its fault is being the language of Scripture, if he is shewn to be absolutely ignorant of the alphabet of the language which he condemns; and he *may* “go out of his path to cast an ignorant sarcasm on the language of the Bible,” and be justly and rightly accused thereof; if, in a literary work on the Philosophy of Arithmetic, he shall condemn the language of the Old Testament, “as the rudest and poorest of all written languages,” without having common elementary knowledge of the language, or being even aware of the attributes and characteristics of the language, which are known to men of liberal education as a matter of general information. It is quite obvious, that the highest offences against the cause of truth may be committed in literary publications; that matters of which the author is supremely ignorant, may be treated of with a degree of arrogance and dogmatical presumption, which cannot be too severely reprehended; and it is one of the permanent and highest uses of a free press, to expose such ignorance, and to chastise such levity and presumption. To bring the publisher of a literary work into Court in an action for defamation, by a summons accumulating and stringing together a number of phrases and

epithets, selected and picked out of a variety of unconnected passages in different parts of that critical work, but without setting forth and reciting any one of the passages in which these epithets and phrases are contained, without even quoting the *sentences* in which they are introduced, and far less the remarks and illustrations by which they are supported, is the most preposterous, unexampled, and barefaced attack upon free discussion, which has been attempted since the origin of the law of libel. If an author is chargeable with *ignorance, arrogance, and presumptuous and groundless sarcasms* against the language of Scripture, he deserves to be severely censured for such literary offences; and the conductors of a critical work deserve commendation for making them the subject of public observation. The present summons is therefore clearly irrelevant, as the pursuer HAS NOT DARED TO QUOTE ANY OF THE PASSAGES CONTAINING THE GROUNDS AND REASONS AND EXPLANATIONS OF THE CHARGES OF WHICH HE NOW COMPLAINS.

The *good taste* and *propriety* of the language in the passages referred to, the defender is not bound to maintain or defend in a court of law. But he distinctly asserts, that all the remarks in which the epithets and phrases contained in the summons occur, are completely within the bounds of fair and free discussion, and are supported by such facts and circumstances, and by such extracts from the pursuer's publications, as completely to exclude the charge of unwarrantable and unprovoked attack.

The defender confidently submits, that a more important question of relevancy cannot occur; and he maintains, that the artful and extraordinary mode in which the summons is framed, is merely an attempt to evade that question of relevancy, and is one of the most direct attacks on the freedom of the press ever attempted. If the publications of the learned pursuer all afford such foundation for the charges of which it complains, as to exclude the pretence of malice, and to bring these remarks within the pale of free criticism and discussion, then there is no calumny,—and there is no ground of action. But that point must be settled in the first instance; and the Court will never for one moment sanction so direct an attempt on the liberty of the press, as to send a summons, claiming damages for expressions said to be contained in passages in a literary work, as relevant to the Jury Court, when the pursuer purposely and studiously withholds from the Court

the passages which he alleges to contain the libels, and from which alone the Court can judge of the relevancy of the summons.

There are many other considerations of still greater importance, which will occur in judging of the relevancy of the summons. But, in the mean time, the defender has already sufficiently shown that the summons is wholly irrelevant. He will only add, on this point, that no action for libel could be brought into an English Court, the declaration withholding the passages in which the pretended libels occur.

Further,

1. If the passages had been set forth, it would appear that there is no attack whatever on the learned pursuer, as a Man, or as a Professor. The remarks of which he complains are directed against him in his character of an *Author*, and are all confined to observations suggested by his publications.

2. The Magazine, in every instance enumerated in the summons, lays fully and fairly before the public the *grounds* and *reasons* of the observations and comments made on the learned publications. No remark is made, of which the grounds occurring in the learned pursuer's works are not quoted and referred to. The matter is therefore, in all the instances, fairly laid before the public, that they may judge, having the whole facts before them, whether the observations made in the defender's Magazine are just and well founded. It is clear that your Lordships ought to have the same information in judging of the relevancy of the summons. Had that information been given, the Court would have been able to judge whether any of the epithets enumerated and complained of in the Summons, or any other ground of action occurs at page 355. of the 40th Number of the Magazine, where the following passage is to be found:—"I hope, at least, you will see that I have followed a principle somewhat different from that adopted by Mr. Leigh Hunt in his classical translations. The King of the Cockneys knows no more of Greek than Professor Johnny Leslie does of Hebrew. By the way, in looking over the last number of Dr. Watt's *Bibliotheca Britannica*, I have discovered, with amazement, that that celebrated personage was a poet in his youth. Why don't you review his 'Phoenix Park,' 'Killarney,' &c.? I have copies of both classical productions at your service. Why, finally, did you allow Dr. Brewster to have the merit of pointing out Leslie's monstrous plagiarism of his theory of heat,

from on old volume of the Philosophical Transactions? For shame."

There is some ridicule in the foregoing passage,—there may be some bad taste; and the concluding sentence probably contains the sting which has given rise to this absurd action:—But what *ground of action* for damages can be extracted from the foregoing passage, if the pursuer does not mean so to narrow the liberty of the press as to protect himself equally from ridicule, and from the charges of literary ignorance and scientific plagiarism, the defender is at a loss to discover.

In the same manner had the passage containing the phrase "*Enfant perdu*," (which is quoted in the summons, and appears even by itself a singular ground of action for a libel,) been set forth in the summons, the Court would have been able to judge of the relevancy of making such a phrase a ground of action in a court of law, and would have detected the egregious literary misapprehension of the meaning of the phrase, "most unfortunate, though perhaps a courageous *Enfant perdu*." The meaning of the phrase *Enfant perdu*, the Dictionary of the French Academy thus explains: "On appelloit autrefois *Enfans perdu*, les soldats détachés, qui commençoient l'attaque un jour de combat!" (Anglice 'Skirmishers.') Such is the meaning of the French phrase here made the ground of an action of damages. But it may be that the members of the *Institute* do not inherit the accurate knowledge of the French language for which the *Academy* were so celebrated.

In like manner, the word "ignorance," one of the epithets most grievously complained of, occurs in the following sentences at one of the pages referred to (page 208.) of No. 44: "As I am on the subject, I may remark, that I was at first a little surprised to find, that, in the second edition of the Philosophy of Arithmetic, which was announced since I had pointed out Leslie's mistake, he had not retracted the unlucky note which convicted him of 'ignorance;' but, on inspection of the work, my wonder ceased, for I perceived that the new edition was nothing more than the old one, with a fresh lying title-page, and a few additional leaves; in short, only a collusion between an honest bookseller and a doubly honest Professor to impose on the public, and get rid of the remaining copies of an unsaleable work." Had the pursuer set forth this passage in this summons, the Court would have been enabled

to judge whether there is ground of action in the use of the word "ignorance," or generally in the foregoing passage. The alleged ignorance even of the alphabet of the Hebrew language, which the learned pursuer, in a scientific work, *went out of his way* to describe "as the *rudest and poorest* of all written languages," is not denied in the summons, and cannot be disputed. Is there any ground of action for alluding to such an instance of ignorance:—or, is the remaining part of the above passage actionable; or is it not the exposure of literary imposition and unworthy trick, by which the public is protected, and which it is one of the legitimate duties of true criticism to make.

Under protestation to add and eik, &c.

(Signed) JOHN HOPE.

The action came, in the course of the Rolls, before Lord Gillies, Ordinary, on the 1st Feb. 1821, when, after hearing counsel for the parties at considerable length, his lordship pronounced the following interlocutor: "Lord Gillies,—*Act.* Cockburn, Moncrieff, *et* Jeffrey,—*Alt.* Hope, More, *et* Erskine." "Having heard parties' procurators, appoints the cause to be further heard to-morrow or Friday."—(Signed) "AD. GILLIES."

The cause was again called on the 3d Feb. 1821, and counsel further heard, when the following interlocutor was pronounced: "Lord Gillies, partibus ut intra, Having called the cause in presence of the counsel for the parties, remits this cause to the Jury Court."—(Signed) "AD. GILLIES."

The process was accordingly transmitted to the Jury Court, where the following order was made: "In the Jury Court, Edinburgh, 12th Feb. 1821, It is ordered in this case, that the pursuer lodge a condescendence, in terms of the Act of Sederunt, on or before the 1st day of March next; and that the defender lodge answers thereto, on or before the 1st day of April thereafter. By the Court."—(Signed,) "WILLIAM CLERK, First Clerk, J. C."

A condescendence for the pursuer was lodged in terms of this order, on the 4th June, 1821, to which the defender put in answers on the 9th November following, and on the 6th December thereafter, the following motion, on the part of the defender, was intimated to the pursuer's agent. "In the Jury Court, John Leslie, *pursuer*, and William Blackwood,

defender, Take notice, that on Saturday the 8th day of December current, or as soon thereafter as counsel can be heard, this honourable Court will be moved on the part of the *defender*, that he be heard upon the relevancy of the pursuer's action and condescendence; and that the Court do remit the case to the Court of Session for this purpose."

Signed, A. G. ELLIS,
Agent for the Defender.

To Æneas Macbean, W. S.
Agent for the Pursuer.

In consequence of this notice, counsel were fully heard on both sides, on the 10th of December, 1821, when the Court postponed its decision till next term, in order maturely to consider this important question.

On the 9th January, 1822, notice was received that the Court would deliver their opinions on the motion for a remit on the 14th.

On that day, the cause was called in Court, but the decision was again delayed at the request of the defender's counsel, who craved to be further heard.

The cause was again called on the 16th of January, 1822, when counsel were fully heard farther upon the defender's motion, when the following order was made:—" In the Jury Court, Edinburgh, 16th January, 1822. It is ordered, on hearing counsel for both parties fully on this motion, that that part of the said motion craving a remit to the Court of Session, be dismissed. By the Court.

(Signed) JOHN RUSSELL,
Third Clerk of the Jury Court."

On this occasion, the Judges delivered their opinions to the following effect:—

LORD CHIEF COMMISSIONER.—It is necessary that some detail should be gone into, as to what we consider the solid grounds for deciding this case. It is an application under the 12th section of the act, to remit in terms of that clause, by which it is provided, " That it shall be competent and lawful for the Jury Court, when it appears to the said Court, in the course of settling an issue, or issues, or at any time before trial, in the cases remitted to them as aforesaid, that there is a question or questions of law or relevancy which

ought to be *previously* decided, to remit back the whole process and productions to the decision of the Court of Session ; the Lord Ordinary ; or Judge-Admiral, who remitted the cause to the Jury Court, that the question or questions of law or relevancy may be considered and detained there"—the word "*previously*" is there used in a way quite unequivocal, that there *are* cases of law which must be decided before going to trial ; and it must therefore be considered whether, in the case before us, there is a question which should be previously determined. It is necessary farther, therefore, to consider the point of law ; and if we see, in the whole circumstances of the case, that the matter of law may not be previously but subsequently determined, we will not remit : at the same time, if there be a doubt whether the point should be decided previously or no, it would be improper to send parties to trial unwittingly. There appears to me to be in this case just four questions :

1st, Whether libel, or no libel, is a matter of law ?

2d, Whether criticism, however severe or sarcastic, be, or be not, a libel ?

3d, The most important of these questions, Whether the work in question is a work of this last-mentioned description ? and,

4th, Which should be considered first, not last, the form of the summons.

We are all agreed on this question, namely, that libel or no libel is a question of law in Scotland. There is not much said on the subject in the law books of Scotland.—Stair advises that reference should be made to the law of England. The Court stands in this position, that if a question of law arises, there is no need of applying to the Court of Session to instruct us in the law, as we know how to decide. It is well known, that a very important question of law arose in a case tried before me at Dumfries, when I gave the parties their option to have a special verdict, or a bill of exceptions. The counsel, in a way very flattering to myself, left it to me, and I considered a bill of exceptions the remedy. There can be no doubt that a bill of exceptions affords the most full and ample opportunity for subsequent discussion. His Lordship here remarked on the case of Tipper before Lord Ellenborough, and on the case of Sir John Law v. Mr. Hood, in last edition of Erskine's Institutes, not noticed in the text, but only referred to in a note : His Lordship proceeded ;—

The parties will have an opportunity of excepting to the verdict at the trial. The nature of the alleged libel in this case must be gathered from the object of the work. I am clear that, in a work of this sort, criticism, even though its tendency is to ridicule, must be admitted, otherwise the first writers would maintain a monopoly of opinion on every subject; but if such criticism departs from the object of the work, and steps aside to attack private moral character, I would be the first in endeavouring to afford redress. Proper criticism is no libel, or at least it is a privileged and protected case of libel, such as giving a character to a servant, or pleading brief given to counsel. There is little of the law of Scotland stated on this point; the only case is that of Jardine the schoolmaster. Malice is taken away if the criticism is such as stated by Lord Ellenborough; and, therefore, there is then no right of action, and there is no libel. I think the law on this point is as laid down by Lord Ellenborough; but if wrong directions are given to the jury, the party may take a bill of exceptions, the effect of which will be, that whatever the verdict may be, the case may be ultimately decided in the House of Lords. Observe what is done in England. There a bill of exceptions is considered an odious remedy to the bench. I have not been able to find any reason why it should be odious, but such is the case; and, accordingly, other plans are adopted there, as the objection to, or arrest of judgment; writ of error, before or after trial, and special verdict. The cases quoted by Mr. Hope, on the part of the defender, came all after trial; and in one case the question was an *objection* to the form of the declaration,—not properly a *demurrer*. A party taking a demurrer must previously *admit the facts*, and after the decision of the demurrer, the only point that remains is to assess the damages. The demurrer alluded to on the other side was not to the action, but by the defendant, to the form of the declaration, (Price's Reports, Court of Exchequer, Baron Thompson,)—there is scarcely an instance of demurrer to the action. Being particularly anxious to collect every information on the point, I wrote to Sir John Richardson and Baron Wood, a letter for information on this question, "Whether you have ever met with a demurrer to a declaration in a case of libel, because the matter complained of was not in law a libel," to which I had answer, that neither of them recollected of any demurrer on this ground. This made me doubt Baron Wood's recollec-

tion, and I therefore looked into the case of demurrer referred to, and found it not to be to the action, but to the form of the declaration.

As to the bill of exceptions, I have always allowed the bill in all cases since this Court began, being anxious to encourage it, because I consider it a most admirable, as well as the most ample form of redress. His Lordship here referred to the clause in the act 1815, providing for the procedure by bill of exceptions, and to the verdict in the case of *Clark v. Cannan*, 6th July, 1818, which was excepted to, and the cause afterwards decided in the House of Lords, in June, 1819. By the bill of exceptions, the directions to the jury may be excepted to; and, in short, there is nothing that can come before the Court that cannot be again examined into under it.

As to the last question, the application of the law which I have endeavoured to explain, must not, as contended for by Mr. Hope, be made to rest entirely upon general principles; if I had pursued this course in all the cases that have come before me, in this Court, there would have been inconsistent decisions in many of them. No, the application of the law must rest on the case itself; in this case the law and the facts are in a manner united. We must examine whether the matter charged here, appears from the libel and defences, condescendence and answers, to involve a point of law which ought to be decided before going to trial. Now, what is there stated? The first criticism there stated is of a Hebrew work; *sarcastic* at least, I think, but it confines itself to the object of the work, supposing no personal allusion; but again, it withdraws from the object of the work in the remaining articles, where it is said, the pursuer is held out to be the Professor who perverts the religious principles of the young men who come as students to the University of Edinburgh. Now, I find it stated in the answers to the condescendence, that this "passage is not of and concerning the pursuer." Here it is denied that there is any attack upon him (Professor Leslie) as a man, or as a professor; and here the parties are at issue as to the fact, which is evidently a matter for a jury to determine. I do not intend to give any opinion upon it, as to the import of any of the expressions, but one, viz. the last, which, in my opinion, is highly injurious, if meant to apply to the pursuer. The matter charged in the libel appears to make a case, in which the question of law

need not be previously determined, but may afterwards. I am therefore of opinion, That

1st, There is no question of general law which we require to be instructed on. That,

2d, There is no question of particular law which requires to be previously decided.

3d, There is no reason to separate the facts from the law of the case.

4th, As to the summons, it appears from the reference there made to the Numbers and pages of the Magazine, that it is complete enough, in the specification of the libellous matter; and it charges malice. His Lordship then referred to the opinion of Lord Hermand, in the case of Forteith against Fife. On the whole, I am of opinion that the summons is sufficient to maintain action; that there is no general question of law we require to be instructed upon; and no particular case to require to be previously considered. This can be done afterwards.

LORD PITMILLY.—My views on this case have been already fully and satisfactorily stated by my Lord Chief Commissioner. I entirely concur both in the decision, and in the grounds of the decision. The application now made by the defender, that the cause be remitted back by this Court to the Court of Session to decide the matter of law, previously to going to trial, is on the 12th § of the Act which has been read. By it we are plainly called upon to consider two questions:

1st, Whether there is here a question of general law; and,

2d, Supposing that there is a question of general law, whether it is such as ought to be previously decided.

I have no doubt that libel or no libel is a question of law; or that severe criticism may be no libel. I can, however, conceive a case of pure law as to criticism, where there is clearly no libel, or where it does not apply to the party; and in such a case, we might send it back to the Court of Session. But we must here look into the summons and defences, condescendence and answers, and decide on the whole; and I think we are not entitled to remit it. I will not enter minutely into the question. To give any opinion on the motive of the matters charged, would be improper in this stage of the case. I may, however, notice one part of it, which has been already done by my Lord Chief Commissioner, viz. one passage of the work which is admitted to be a libel, but is said not to apply to Professor Leslie; now that must

go to a Jury, and we cannot separate law from matter of fact. If there is *one* point of the case that must go to a jury, the whole must go, as we cannot separate the case into questions of law, and questions of facts which are the subjects of proof.

LORD GILLIES.—I feel myself much in the same predicament with my Lord Pitmilley, and feel delicacy in adding any thing—but I am clear that there is nothing in law or relevancy which should make us send back this case to the Court of Session—we must remember, besides, that this is a privileged action. (His Lordship here read the first clause of the act, enumerating the description of cases required to be *further* remitted to the Jury Court for trial.)—The question does *not* appear to me to be—whether there is a question of law—for questions of law and relevancy must arise in every case, but whether there is such a one as requires to be previously decided, or as would warrant the Court in subjecting the party to discuss it in representations, petitions, and reclaiming petitions, &c. Preliminary questions, such as—whether summons properly executed—or where the matter is not of sufficient importance to infer damages on the principle *de minimis non curat prætor*, or the like, are questions of law, but upon all these the Lord Ordinary is entitled to decide. I certainly considered that there was no such question of law as to require previous decision, when the case was debated before me—in every case of libel, however, the question arises, whether the words are malicious or not—and if it appears that no such question as that already explained arises, or that it is not necessary to send it back, we would betray our trusts to send it back.—(His Lordship referred to the paragraph charging the Professor with the perverting the morals of youth.)—Certainly this is highly injurious. It is not denied in the answers that it applies to the Professors—but said not to apply to Professor Leslie. With regard to the case of demurrer alluded to by the Chief Commissioner, I understand the declaration and answers in England to be the pleadings on which the parties go to proof, and to be much the same as our condescendence and answers, and if I am right in this, these evidently cannot be compared with the summons and defences. With regard to the summons in this case, I have never in my practice, which is now of pretty long standing, met with a summons so specific, as to supersede the

necessity of a condescendence, and on looking at the references contained in this summons, I think it sufficiently specific—but the act of sederunt 1800 is better authority than either my opinion, or even that of all the members of the Court, at present alive, put together; and it enacts that no case whatever shall go to proof, until the facts are stated in a condescendence. The phrase is, that the defects of the summons may be corrected in the condescendence.—Such a specification is not required in a summons. I entirely concur with my learned brethren on the bench.

Thereafter, the condescendence and answers were mutually revised on behalf of the parties, and the following Issues prepared and adjusted by the Court for trial.

ISSUES in the Cause, in which JOHN LESLIE, Professor of Natural Philosophy in the University of Edinburgh, is *Pursuer*, and WILLIAM BLACKWOOD, Bookseller in Edinburgh, is *Defender*.

It being admitted that the pursuer is Professor of Natural Philosophy in the University of Edinburgh, and that the defender is proprietor and publisher of a certain periodical work, called ‘Blackwood’s Edinburgh Magazine;’ and it being admitted, that the 35th number of the said work, published by the defender at Edinburgh, on or about the month of February 1820, contains the following words and figures, viz. “LESLIE *versus* HEBREW. *Dublin, Jan. 20, 1820.* Mr. Editor,—In a trifling composition I sent you some time ago, it was asserted that Professor Leslie had thought proper to pass a heavy censure on the Hebrew language, in his *Philosophy of Arithmetic*, though, as I added, it could be proved from his own writings, nay, from the very passage that contained the charge, that he is ignorant even of the alphabet of the language on which he thus presumed to offer an animadversion. The professional *dictum* alluded to is this: ‘The Oriental nations appear generally to have represented the numbers as far as one thousand, by dividing their alphabet into three distinct classes; but the Hebrew, *the rudest and poorest of all written languages*, having only twenty-two letters, could advance no farther than 400; and to exhibit 500, 600, 700, 800, and 900, it had recourse to the clumsy expedient of addition, by joining 400 and 100, and 400 and 200, 400 and 300, 400 and 400, and

400 with 400 and 100.”—Philosophy of Arithmetic, p. 218.

“The rudest and poorest of all written languages! By my troth, Mr. John Leslie, these be bitter words; but the latter part of the sentence, by displaying the utter ignorance of the Professor, happily renders the railing of the former perfectly innocent. Indeed, so much ignorance and impertinence combined, will hardly be found in so short a compass, in the works of any other writer, of the smallest literary character. The merest smatterer in Hebrew—any one who had read the first page of the Grammar, could have informed Mr. Leslie, that the Hebrews had *not* recourse to the clumsy expedient of which he accuses them, and that their alphabet supplied them with characters sufficient for expressing numbers as far as a thousand. It is clear, that the Professor was totally unacquainted with the letters of the language he was criticising, or he would have known, that the five finals, (technically called *Camnephatz*,) are used to express the five last hundreds; and, therefore, that the glory of inventing the expedient, which he describes with such imposing minuteness of detail, is due entirely to himself.—So much for his qualifications to decide on the merits of Hebrew.

“But it appears to me, that he has a particular pique against the language;—that his censure arises as much from spleen as ignorance; for the Roman method of notation is still more clumsy than his fancied Hebrew system.” And the following words, viz. “They may be Arabic also; but to enter into the controversy respecting the comparative superiority of Hebrew and Arabic, for the edification of Professor Leslie, would be as profitable as to set about demonstrating the Seventeenth Proposition of Euclid’s Twelfth Book, to a person who did not know a right line from a curve, much less a polyhedron from a sphere.”—And the following words, viz. “We must look, therefore, for some other reason; and perhaps we may find it in the unhappy circumstances in which Hebrew is placed—it is the language of the Old Testament. The language, as a philosopher like Mr. Hume, or a partizan of Mr. Hume’s would say, dedicated to superstition, and is, therefore, like every thing else connected with such a cause, to be attacked by that tolerant and equitable sect *per fas et nefas*. But in doing so, I may be permitted to remark, there should be some little knowledge of the ground displayed. It is not

good generalship to entrust even the details of a siege to a blundering gunner or a rash volunteer; and I must consider the Professor as a most unfortunate, though perhaps courageous *enfant perdu*, after this specimen of his skill, although he may be enlightened enough in other respects to be entitled to sneer at the credulity of Luther, the Dreams of the Christian Fathers, and the Fancies of St. John," (p. 230.)—And the following words, viz. "He may believe when I tell him, that in the eyes of those who know any thing on the subject, he makes as awkward a figure as the most deficient digit he ever 'caused modify.' He may also assure himself, that the rule, *ne sutor ultra crepidam*, is truly a golden one. He is perhaps a mighty respectable third or fourth rate mathematician, a refrigerator of any rate he pleases, and an arithmetician scarcely second to Cocker himself; but when, on the strength of these qualifications, he thinks fit to step into philosophy, or to invade the province of Critics and Scholars, nothing can be more pitiful. And yet, (p. 232.) he blames Joseph Scaliger (whose name as a man of learning is *rather* higher than Mr. Leslie's as a mathematician) for quitting his usual studies to meddle with mathematics. So easy is it to perceive the presumptive dogmatism of another, and to overlook our own.'

WHETHER the whole or any part of the said words, are of and concerning the pursuer? And whether the pursuer is therein falsely, maliciously, and injuriously represented, and held up to ridicule and contempt, as ignorant of the Hebrew language, and even of the Hebrew alphabet, or as being guilty of impertinence, or of disliking the Hebrew language, merely because it is the language of the Old Testament, and to be attacked, *per fas et nefas*, or as being an *enfant perdu*, to the injury and damage of the said pursuer?

It being also admitted that the fortieth number of the said Magazine, published by the defender at Edinburgh, on or about the month of July, 1820, contains the following words, viz. "The King of the Cockneys knows no more of Greek than Professor Johnny Leslie does of Hebrew. By the way, on looking over the last number of Dr. Watt's Bibliotheca Britannica, I have discovered, with amazement, that that celebrated personage was a poet in his youth:—why

don't you review his Phoenix Park, Killarney, &c. ? I have copies of both classical productions at your service. Why, finally, did you allow Dr. Brewster to have the merit of pointing out Leslie's monstrous plagiarism of his theory of heat, from an old volume of the Philosophical Transactions ? For shame. Yours affectionately—O. P.”

WHETHER the whole, or any part of the said words are of and concerning the pursuer, and falsely, maliciously, and injuriously represent and hold up the pursuer to ridicule and contempt ; as being a plagiarist, to the injury and damage of the said pursuer ?

It being also admitted, that the forty-fourth number of the said work, published by the defender at Edinburgh, on or about the month of November, 1820, contains the following words, viz. “ In a work of his, treating on arithmetic that “ celebrated” man thought proper to go out of his way to revile, in a most dogmatic and insulting manner, the Hebrew language. I asserted that he did not know even a letter of the tongue he had the impudence to pretend to criticise, *and I proved my assertion*. I leave the decision of the question to any Hebraist—to any man of common sense in the land. I proved that he was actuated by a hostility to the language of revelation, simply because it was so ; and I defy any one to refute me. This unfortunate cockney, who is lamenting over my hard treatment of the Professor, of course cannot be supposed to know any thing about the matter in dispute ; but what I am saying, is not the less true on that account. As I am on the subject, I may remark, that I was at first a little surprised to find, that in the second edition of the Philosophy of Arithmetic, which was announced since I had pointed out Leslie's mistake, he had not retracted the unlucky note which convicted him of ignorance. But on inspection of the work, my wonder ceased, for I perceived that the new edition was nothing more than the old one with a fresh lying title-page, and a few additional leaves ; in short, only a collusion between an honest bookseller, and a doubly honest Professor, to impose on the public, and get rid of the remaining copies of an unsaleable work. Here, then, is the vile offence against decency as committed by me. What reason have I to respect Mr. Leslie ? His Essay on Heat ! The matter of that work is no great affair, and the manner is so bad, that even a brother reviewer pronounces it to be

execrable and ‘drossy.’ His mathematics!—There is not an original mathematical fact of the smallest value in all his book; and his barbarous stile, and vile arrangement, have done a great deal to obscure the merit of what he has purloined. I do not intend, for it would not be the proper place to go into any detailed remarks on his geometry, but every mathematician has laughed at his droll proof of the doctrine of parallel lines—at his doctrine of ratios—at his failure in proving his very first proposition, the foundation of his system, and a thousand other such *betises*. Am I to bow to him because he is an Edinburgh Reviewer? I question the inspiration of that worthy oracle. And as to the Professor’s own part in its lucubrations, why, his impudent puffings of himself, and ignorant sneerings at others, have often made me liken Leslie the reviewer, to some enormous over-fed pet of the parrot species, stuck up at a garret window, and occupied all day with saying, ‘Pretty poll, pretty poll,’ to itself. ‘Foul witch, foul witch,’ to every passer by. Look *now*, I beseech you, at his article on the north-west passage!!! What other claims to respect he possesses I know not, except his having made some neat second-rate chemical experiments, and invented some handy little instruments; but even if his claims were ten times as weighty, they should not have deterred me from speaking as I thought. A man who would go out of his path, on an inquiry on the nature of heat, to recommend an impious work—and in a treatise on arithmetic, to cast an ignorant sarcasm on the language of the Bible, or to sneer at the *fancies* of one of the Apostles, must ever be an object of suspicion to those who hold the scriptures in honour, and impiety in detestation. We have no assurance that he may not digress as culpably hereafter; and if he does so, it is only fair to give him warning that I shall take care to point it out.”

WHETHER the whole, or any part of the said words are of and concerning the pursuer, and falsely, maliciously, and injuriously represent and hold up the pursuer to public ridicule and contempt, by representing him to be, or asserting, that he is an insolent dogmatist, or that he has the impudence to criticise that of which he is ignorant, or that he is actuated by hostility to the language of revelation, simply because it is the language of revelation, or as being lying, dishonest, or joining with a bookseller to impose upon the public by dishonesty, or as having purloined from

other authors ; or, as having been guilty of a thousand *betises* ; or, as resembling a parrot ; or, as an object of suspicion to those who hold the Scriptures in honour, and impiety in detestation ; or, as going out of his way to recommend an impious work ; or, as having cast an ignorant sarcasm on the language of the Bible ; or, as sneering at the fancies of one of the Apostles ; to the injury and damage of the said pursuer ?

It being also admitted, that the said forty-fourth number of the said Magazine contains the following words ; viz.—
 ‘ With grief I have perceived, that many of the young men who go from this country to Edinburgh, to pursue their medical studies, come back with their religious principles perverted, and their reverence for holy things sneered away. It would be very unjust to accuse any *individual* of this weighty charge, but the fact is undeniable. I rejoice, therefore, whenever it is in my power, even in the most trivial degree, to shew, that the lights of the famous Northern Sect are not infallible ;—that under affected knowledge, gross ignorance may lurk ;—and that considerable intolerance may sometimes be the characteristic feature of philosophic liberality. I rejoice, also, but much more sincerely, to learn that a better spirit is arising in your famous University ; and in spite of its levity, its humour, its follies, nay, even its transgressions, I think your magazine has been instrumental in this good work.’

WHETHER the whole, or any part of the said words, are of and concerning the pursuer ; and falsely, maliciously, and injuriously hold out and represent the pursuer, as being one of the public teachers, by whom young men, who come as students to the University of Edinburgh, have their religious principles perverted, and their reverence for holy things sneered away, to the injury and damage of the said pursuer ?

OR,

WHETHER the pursuer held himself forth as the author of certain discoveries in regard to freezing or artificial congelation, by means of evaporation under an exhausted receiver, he, the pursuer, knowing or being aware, that the same or similar discoveries were previously pointed out, or

described, in a paper in the sixty-seventh volume of the Philosophical Transactions of the Royal Society of London, entitled “ An Account of some Experiments made with an Air-Pump, on Mr. Smeaton’s principle; together with some Experiments with a Common Air-Pump: By Mr. Edward Nairne, F.R.S.’

It being admitted, that a book entitled the Philosophy of Arithmetic, was published by the pursuer in the year 1820, and is described in the title-page, as a second edition improved and enlarged, meaning thereby, that the said book described as a second edition was enlarged and improved in comparison with the first edition of the said book—

WHETHER the pursuer, with the bookseller, in holding out to the public, the book first aforesaid, as a second edition enlarged and improved, was guilty of a dishonest attempt to impose upon the public?

OR,

WHETHER the pursuer did write and compose the following words, contained in the eleventh Article of the Eighth Number of a certain periodical work, called the Edinburgh Review, for the month of July, 1804, page 399, viz.:—
 “ We profess to be of the daily increasing number of those who do not think very highly of Count Rumford’s talents as a philosopher; and if our former prepossession require any confirmation, (which it certainly did not,) he has taken very great pains in the elaborate performance now before us, to supply a variety of new proofs. This inquiry deserves our serious attention in many points of view. The exact coincidence of the only valuable and original matter which it contains, with the late curious and unexpected experiments of Mr. Leslie, throws a suspicion upon one or other of these authors which the public have right to see removed.”—Or, the following words, viz. p. 400. “ But if we were to state the opinion with which a review of the whole work has impressed us, we should say that Count Rumford had *borrowed* Mr. Leslie’s leading discovery, without completely understanding its nature and extent; that he had pursued it imperfectly, and so mixed it up with error and fanciful theory, as to disfigure it, and almost prevent one from recognising the

property. The same inference will probably occur to such of our readers as attend to the following details; and we hope to make it still more obvious in our review of Mr. Leslie's work."—Or, the following words, viz. p. 402. "Now we are forcibly struck, we acknowledge, with the exact coincidence between all these curious experiments, and those of Mr. Leslie, as detailed in the sixteenth chapter of his Enquiry into the Nature and Propagation of Heat. The same series of observations upon the cooling of hot water through plain and coated vessels—the same sort of calculations, though certainly much better instituted—the same observation of an uniform increase of cooling or heating by coats of isinglass and lamp-black, form the prominent features of both inductions. Mr. Leslie's experiments, however, are more various and masterly—his mathematical illustrations and proofs are much more skilful; and, though we are not prepared, in this place, to examine the truth of his remote theoretical deductions, we are satisfied of the accuracy of his intermediate results, which far exceed those of Count Rumford in their number and generality. The next part of the inquiry now before us, is, however still more striking, from its coincidence with Mr. Leslie, to whom the author has not been able to conceal his obligations, although he has certainly abstained from acknowledging them."—Or, the following words, viz. p. 404:—"We shall dismiss this part of the subject, with expressing our high admiration of that very important and elegant modification of the air-thermometer, which Mr. Leslie, not Count Rumford, has happily contrived; an improvement calculated to introduce as much accuracy, and to open as wide a field of discovery in the science of heat, as the combination of glasses did, in the sciences of astronomy and optics. By it we are enabled to weigh, with the utmost nicety, all proportions of caloric, and to estimate, as correctly as by a delicate balance, every variation of temperature. In reviewing the application of this happy invention to the purposes of investigation, as detailed by the discoverer himself, we shall have an opportunity of doing justice to its merits. At present we hasten to sketch the uses which the borrower of the idea has made of it, and in which we shall again be satisfied how unwilling he has been to deviate from his original."—Or, the following words, p. 414:—"That we do not value without some reason Count Rumford's talents as an experimentalist,

and as a reasoner on a confined scale, from the proximate doctrines of his experiments to the useful arts, may be gathered partly from the illustrations formerly quoted, and partly from the practical applications with which his paper concludes. These are, indeed, in this instance, the applications of discoveries not his own ; but they show as much useful ingenuity as if he himself had contrived the instruments, and performed the fundamental experiments of which we have been constrained to deny him the merit.”—Or, the following words, contained in the tenth article of the thirty-first number of the said Review, viz. p. 240 :—“ M. Humboldt laments that he had not an opportunity of trying, within the tropics, the photometer with which Professor Leslie has enriched our philosophical apparatus. We heartily join him in that feeling ; but we regret still more that he had not employed the hygrometer, which the same philosopher has constructed, from a nice view of the nature of evaporation, and which, combining accuracy of principle with facility of application, promises, when better understood, and more generally diffused, to procure incalculable advantages to science, and to the practice of the useful arts.”—Or, the following words, contained in the fourth article of the forty-eighth number of the said Review, viz. p. 339 :—“ Mr. Leslie is well known to the scientific world, by the ingenuity he has displayed, in the contrivance of his methods and instruments, in those experimental investigations to which he has directed his attention. The subjects which he has now announced, are some of the most difficult in the branch of science to which they belong, and, in the present state of knowledge, can be elucidated only by very minute and accurate observations. We might therefore anticipate an interesting work from the title of the present publication, and we are persuaded, that an analysis of it cannot fail of being acceptable to our readers.”—Or, the following words, p. 340 :—“ A part of the subject of heat, which, it is well known, Mr. Leslie has very successfully investigated, is that relating to what is called its radiation. There are two modes in which heat is discharged from bodies. A portion is communicated to the contiguous matter, and is slowly diffused through it. Another portion, when the body is placed in an aerial medium, is discharged with rapidity, darts through the air to a distance, and even at that distance, when intercepted, produces a heating effect. This forms what is called the ra-

diation of heat. We are indebted to Mr. Leslie for the discovery of the important fact, that different kinds of matter at the same temperature, discharge very different quantities of heat by radiation.'—Or, the following words, p. 343, viz.—' Mr. Leslie was enabled to ascertain many of the facts on this subject, with more precision than could otherwise have been attained, by an instrument of great delicacy which he invented, the differential thermometer, well known, we presume, to most of our readers. The common air thermometer is useful, from its being capable of showing the most minute variations of temperature; but it is also liable to great disadvantages, in being instantly affected by any variation in the temperature of the surrounding medium during an experiment, and also by variations in atmospheric pressure. In the differential thermometer, these sources of error are excluded.'—Or, the following words, p. 344:—" The same instrument, under various modifications, has been applied by Mr. Leslie with much ingenuity to other purposes."—Or, the following words, p. 345:—" Passing from the consideration of the relation of heat to air, Mr. Leslie proceeds to consider the relations of air to moisture. There is no instrument which it has been found more difficult to construct, than one which shall give accurate indications of the state of the air with regard to humidity or dryness. The greater number have been framed on the property which certain bodies have of attracting water from the air, and of thereby increasing in volume, so that, if a substance very sensible in this respect be selected, and if contrivances are adapted to it, to show minute alterations of volume, these may indicate degrees of moisture.— Many hygrometers or hygroscopes, as some name this form of the instrument, have been constructed on this principle; but they are all liable to inaccuracy from various causes, and particularly from the substances employed suffering in time, some change of structure, so that their indications cease to correspond accurately with those from which the scale had been constructed. Mr. Leslie has revived and improved an instrument of this kind. He employs a tube of ivory containing quick-silver, with a glass tube adapted to it, and to which a scale of equal parts is attached. When the ivory yields moisture to the air, which it does according to the dryness of the atmosphere, it contracts and presses the quick-silver higher in the tube;—when it im-

bibes moisture from damp air it swells, and allows the quick-silver to subside. Mr. Leslie finds, however, that these variations do not correspond with the real measures of atmospheric dryness or humidity; near the point of extreme dampness, they are much augmented, while they diminish rapidly towards the other extreme. The addition of another scale, therefore, corresponding to this inequality, is necessary; and even with this, it cannot be regarded as either an accurate or delicate instrument.”—Or, the following words, viz. p. 346: “On the other principle, Mr. Leslie has constructed what he regards as the most accurate hygrometer. It is a happy application of the differential thermometer. One of the balls is coated with fine cambric paper, and the paper is moistened with pure water. Evaporation takes place; and from the cold which accompanies this, the liquid falls in the opposite stem. The extent of its descent is measured by the scale attached. This indicates the degree of cold; this, again, the extent of evaporation; and this, lastly, indicates the relative dryness of the air—the evaporation being proportionally greater as the air is more free from moisture. The full effect is very soon obtained, generally in about two minutes; and it continues permanent, under the same circumstances, as long as moisture is supplied to the covered ball.

“Mr. Leslie conceives that the theory of this instrument, or rather the theory of evaporation, on which it is founded, has been imperfectly understood; he, therefore, gives a more full statement of it, which would still, however, require perhaps some further elucidation.”

Or, the following words, viz. p. 348: “Mr. Leslie has invented another instrument, which gives indications of the quantity of evaporation from a humid surface, in a given time—what he has named the *Atmometer*.”

Or, the following words, viz. p. 349: “The law of evaporation in air, with regard to temperature, forms a very important subject of investigation, particularly as laying the foundation of the theory of rain. The late Dr. Hutton inferred, that the solvent power of air, with regard to water producing evaporation, must increase in a higher ratio than the increase of temperature. From this it followed, that on two portions of air, at different temperatures, each saturated, or nearly so with moisture, being mixed, part of the water would be precipitated; and this he regarded as the cause of rain. The inference, however, with regard to the law, seem-

ed to rest in a great measure on reasoning, or rather on conjecture. It was, therefore, extremely desirable that it should be determined by experimental investigation ; and we consider Mr. Leslie's researches on this subject, (of which we have a notice in p. 121, more brief than we could have wished,) as very important. He employed two methods ; but the following is the one which he preferred, especially for the higher temperatures."—Or, the following words, viz. p. 351 : " On this principle is founded the very beautiful experiment, invented by Mr. Leslie, of causing water to freeze by the cold produced by its own evaporation. The peculiar arrangement for this, consists in placing water in a porous earthen cup, suspended within the receiver of an air-pump, and placing at a short distance beneath it, sulphuric acid in a broad shallow vessel, so that an extensive surface of the acid shall be presented. On rarefying the air, the evaporation of the water is accelerated, and of course the degree of cold produced by that evaporation is increased. This, however, would soon be checked by the presence of the watery vapour, but this the sulphuric acid absorbs almost as quickly as it is formed ; keeps, therefore, the rarefied air always dry ; and thus allows the evaporation to proceed with the same rapidity. The temperature, therefore, continues to fall, until the water shoots into crystals of ice ; and even after it is entirely congealed, the ice continues to suffer evaporation, until it wholly disappears. Or, the following words, viz. p. 352. ' Our analysis of this work has been more than proportioned to its length, but it contains so many important facts, and interesting applications, that we could scarcely have done it justice within narrower limits. Its fault, indeed, a fault into which its author is perhaps liable to fall, is the too great condensation ; or rather, the imperfect development, of the peculiar facts and doctrines which are introduced. In these branches of physical investigation, where the conclusions are, in general, inferences resting on probable evidence, a full statement of the whole steps of the investigation, and a comparison with any opposite conclusions that may be drawn, is always satisfactory. Mr. Leslie's experimental results are sometimes too briefly stated, and the grounds on which his conclusions rest, are not always brought sufficiently forward ; the evidence for them, therefore, frequently appears not equal to the confidence with which they are delivered ; and objections occur which a more ample statement or il-

illustration might perhaps have obviated. We need scarcely add, that the whole work is marked by that ingenuity of invention, and that minute discrimination, which have always distinguished Mr. Leslie's investigations."

And whether the defender, in stating that he had often likened the pursuer to a parrot, meant and intended to allude to, and characterize, and did allude to and characterize, the pursuer, solely as the author of the said passages?

Damages laid at L.5000

(Signed)

WILLIAM ADAM,
Lord Chief Commissioner.

Jury Court, 29th May, 1822.

Thereafter, the pursuer gave notice to the defender of the trial being fixed for the 15th July; but shortly afterwards, notice was given on the part of the defender of a motion to be made in Court on the 13th, for a postponement of the day of trial.

The cause was accordingly called on the 13th of July, when the following procedure took place.

Mr. MORE, as counsel for the defender, rose in order to request the indulgence from the Court of a little delay in this case, in consequence of the sudden and unexpected absence of Mr. John Hope, the other counsel, who had taken the lead in the management of it, and who had fully prepared himself upon the case. He therefore threw himself on the indulgence of the Court, begging them to postpone this case, as it was impossible for him to prepare himself in so short a period to do justice to a case that had already occupied so much time from the other counsel.

Mr. JEFFREY said, that he stood in behalf of the pursuer, who had a right to fix a day for the trial of his case, and he wished to obtain a speedy decision: he hoped they would not consider his interest as of less moment than that of the other party. The case had now pended for a long time in spite of the pursuer; it had been protracted by discussions in the Court of Session, which had here been repeatedly resumed. The pursuer, standing as he did in the condition of a public teacher, had been calumniated in his moral and intellectual character, and had thus the most powerful motives stimulating him to clear away as soon as possible the stigmas thrown upon him. The request was nothing but this, that, on account of the absence of the junior counsel, they

should postpone the trial for the space of four months, now that the session was concluded, and counsel had not left town ; during which additional time, the pursuer would be forced to labour under all the reproaches thrown upon him, with the risk too of losing evidence on which he principally relied. He begged leave to inform them, that the pursuer had suffered a great loss of reputation and professional income, owing to the charge of corrupting the youth who were sent to him, which had the effect of greatly diminishing the number of his students. There was no one acquainted with Mr. More who was not convinced that there could be no one of equal standing at the bar more capable of doing justice to this case in the absence of the other counsel.

The LORD CHIEF COMMISSIONER here interrupted Mr. Jeffrey. His Lordship wished to state the view of the Court in this matter, and after doing this they would hear any thing farther he had to add, if he wished to enlarge his observations. He (his Lordship) was perfectly satisfied that the case was one of such a grave nature that it ought not to be deferred without cause ; but he conceived the sudden and unexpected absence of counsel a sufficient reason for delay. The only question was, whether, between this and Monday next, there was sufficient time for counsel to prepare for this case. He knew from experience how difficult it was to be suddenly and unexpectedly called to act as leading counsel. He was convinced, from the serious and important nature of the cause, that more preparation would be necessary. The Court having taken all this into consideration, they were of opinion that the case ought to be taken up this day se'ennight, that time being thought sufficient for delay ; the expense of which would be borne by the party who had the advantage of it.

Mr. JEFFREY said, that he entirely acquiesced in the proposal of the Court.

The Clerk was then directed to give the Jury notice to attend the Court on Saturday next, at eight in the morning.

The following list of witnesses was lodged on the part of the Pursuer :

LIST OF PURSUER'S WITNESSES.

- 1 Dr. David Irving, librarian to the Faculty of Advocates.

- 2 Reverend David Dickson, one of the ministers of St. Cuthbert's, or West Church, Edinburgh.
 - 3 Rev. Dr. John Lee, one of the ministers of Canongate, residing in Milton-House, Canongate.
 - 4 Rev. Dr. Alexander Brunton, one of the ministers of the Tron Church, Edinburgh, and Professor of Hebrew in the University of Edinburgh.
 - 5 The Rev. David Scott, minister of Corstorphine.
 - 6 Dr. John Thomson, physician in Edinburgh.
 - 7 Dr. Thomas Thomson, regius professor of chemistry in the University of Glasgow.
 - 8 Dr. Henry Dewar, physician, No. 5, Buccleugh Place, Edinburgh.
 - 9 Mr. Alexander Adie, optician in Edinburgh.
 - 10 Mr. Robert Cadell, bookseller in Edinburgh.
 - 11 Samuel Aitkin, bookseller in Edinburgh.
 - 12 Robert Miller, bookseller there.
 - 13 John Bradfute, bookseller there.
 - 14 Adam Black, bookseller there.
 - 15 William Tait, bookseller there.
 - 16 Charles Tait, bookseller there.
 - 17 George Boyd, bookseller there.
 - 18 Sir William Hamilton, Bart. residing in Edinburgh.
 - 19 George Buchanan, civil engineer, Nicolson's Street, Edinburgh.
 - 20 Dr. Thomas Charles Hope, professor of chemistry in the University of Edinburgh.
 - 21 Dr. Alexander Marcet, lately physician to Guy's Hospital, London, and lecturer on chemistry there, presently residing at Gibb's Hotel, St. Andrew's Square, Edinburgh.
 - 22 Daniel Ellis, Esq. Great King Street, Edinburgh.
 - 23 G. A. Walker Arnot, Esq. advocate.
 - 24 Mr. William Wallace, professor of mathematics in the University of Edinburgh.
 - 25 The Rev. Dr. George Husband Baird, principal of the University of Edinburgh.
 - 26 The Rev. Dr. William Ritchie, professor of divinity there.
 - 27 Dr. Andrew Fyfe, lecturer on chemistry in Edinburgh.
 - 28 The Rev. Robert Gordon, minister of the Chapel of Ease, Edinburgh.
- Lastly, the whole of the defender's witnesses here held as repeated.

The following list of witnesses was lodged on the part of the Defender.

LIST OF DEFENDER'S WITNESSES.

- 1 James Noble, teacher of languages, residing in Edinburgh.
- 2 The Rev. Dr. Alexander Brunton, professor of oriental languages in the University of Edinburgh.
- 3 Robert Jamieson, Esq. regius professor of natural history in the University of Edinburgh.
- 4 Dr. Andrew Duncan, jun. physician in Edinburgh.
- 5 Alexander Adie, optician in Nicolson Street, Edinburgh.
- 6 The Rev. George Paxton, minister of the gospel, Edinburgh.
- 7 The Rev. David Dickson, one of the ministers of St. Cuthbert's, Edinburgh.
- 8 Adam Anderson, Esq. rector of the academy, Perth.
- 9 John Waugh, Esq. bookseller in Edinburgh.
- 10 The Rev. Robert Gordon, minister of St. Cuthbert's Chapel of Ease, Edinburgh.
- 11 William Tait, bookseller, Prince's Street, Edinburgh.
- 12 Charles Tait, bookseller there.
- 13 The Rev. Dr. David Ritchie, professor of logic in the University of Edinburgh.
- 14 John Campbell, Esq. of Carbrook, W.S. Edinburgh.
- 15 William Beilby, Esq. M.D. residing in No. 52, Frederick Street, Edinburgh.
- 16 The Rev. Dr. George H. Baird, principal of the University of Edinburgh.
- 17 Nicolson Bain, depute librarian, or assistant to the librarians of the University of Edinburgh.
- 18 The Rev. Alexander Nicol, M.A. professor of Hebrew in the university of Oxford.
- 19 Andrew Fyfe, jun. physician or surgeon, Adam's Square, Edinburgh.
- 20 Francis Jeffrey, Esq. advocate.
- 21 Macvey Napier, Esq. W.S.
- 22 George Steele, apprentice to William Blackwood, bookseller, Edinburgh.
- 23 William W. Ramsay, clerk to said William Blackwood.
- 24 Robert Cadell, bookseller, Edinburgh.

(Signed) WM. ELLIS,

Agent for the Defender.

Edinburgh, 11th July, 1822.

The defender means also to adduce the whole witnesses in the pursuer's list, whose names and designations are here held as repeated *brevitatis causa*.

(Signed) W. ELLIS,
Agent for the Defender.

THE TRIAL.

JURY COURT.—EDINBURGH, *July 22, 1822.*

PRESENT,

Right Hon. WILLIAM ADAM, *Lord Chief Commissioner.*
Honourable LORD GILLIES.

Mr. FRANCIS JEFFREY,	}	<i>Counsel for the Pursuer,</i> Mr. LESLIE.
Mr. JAMES MONCRIEFF,		
Mr. HENRY COCKBURN,		

ÆNEAS M'BEAN, W. S. *Agent.*

ROBERT FORSYTH,	}	<i>Counsel for the Defender,</i> Mr. BLACKWOOD.
JOHN SHANK MORE,		

W. & A. G. ELLIS, W. S. *Agents.*

The following Jury was sworn in, to try the Issues, viz.—

JAMES MACFARLANE, Castle Street.
HUGH FRANCIS CADELL, of Cockenzie.
JOHN FOWLER, of Windygowl.
WILLIAM AITCHISON, Younger of Drummore.
ARCHIBALD DUNLOP, Distiller, Haddington.
JAMES WADDELL, of Crofthead.
DUNCAN COWAN, Paper Maker.
ROBERT STEVENSON, Civil Engineer.
WILLIAM MILL, Hermitage Place.
DAVID ROBERTSON, Albany Row.
ALEXANDER SMITH, Banker.
GEORGE HUNTER, Merchant.

The Issues were then read by the Clerk.

The Jury were then addressed by Mr. Moncrieff, as follows:—

Mr. MONCRIEFF.—Gentlemen of the Jury, I have the honour to address you on this occasion in behalf of the pursuer, Mr. John Leslie, Professor of Natural Philosophy in the University of Edinburgh—a *name*, of which I may be permitted to say, without incurring the derision of the defender, that it could not be pronounced in any society of learned men in Europe, without those sentiments of respect which never fail to await great and unquestioned genius.

Gentlemen, Mr. Leslie is in the honourable situation of an instructor of youth in the University of Edinburgh. All men know that he is diligent in the duties entrusted to him, and zealous in his endeavours to exalt the honour of the University, and the country to which he belongs. His living and patrimonial interest depend on his activity and exertions in the prosecution of scientific researches. On the other side, you have the defender, Mr. William Blackwood, who is a bookseller, and a publisher of some consideration, and who, in the present cause, appears before you in the character of the publisher of a periodical work,—a miscellaneous magazine, of extensive circulation, the general character of which is not unknown—with which, however, we have here no further concern, than as it appears in the facts disclosed by the Issues lying before you, and which you are now to try.

The pursuer, Mr. Leslie, complains of a *series* of false, malicious, and injurious libels, published to his prejudice in the work of the defender; of a series of libels, touching at once his character as a man of principle and honesty—his qualifications as a Professor,—and his reputation as a man of science,—which hold out all his studies and all his labours to the contempt of the world, wherever this magazine may find its way; and by which, at last, he is falsely accused of the infamous and disgraceful offence of corrupting the principles of the youth committed to his charge.

Gentlemen, the subject of this action is not an incidental notice merely of one point, in one article of the work I have alluded to—it is a *series* of attacks upon the pursuer, in *every* point where his reputation, or his usefulness, or his fortune, or his feelings, could be affected by it. I say it is not one incidental notice of him, in any of these respects, which the libels embrace—and this is very important for you to consider,—that, though we must go into particulars, as stated in the Issues, Mr. Leslie's complaint is of continuous, multifarious, universal libels;—libels so brought forward, as to leave no room for doubt in the mind of any man of sound under-

standing, that no motive or possible reason can be assigned for them, but the most determined malice.

Gentlemen, the defender, Mr. William Blackwood, is the *Publisher* of these libels. *Who* is the *Author* of them we do not know. When they first appeared, and before this action was brought, we thought we knew the person; but the gentleman whom we supposed to be the author, as became a man of honour so situated, distinctly denied that he was the author. The pursuer then demanded of Mr. Blackwood, the publisher, by whom these libels were written. Mr. Blackwood, by letter, refused to give up his name, and distinctly stated, that he took the whole responsibility of these libels upon himself.

But, Gentlemen, the defender, Mr. Blackwood, is not responsible merely in this point of view, for these libels—his responsibility goes much deeper. It is not easy for us to suppose what could have been his motives for these continued libels against the pursuer. But they could not have been published without his deliberate approbation, and we have some reason to think, that they must have originated in a poor, paltry jealousy, arising out of the circumstance, that Mr. Leslie employs a rival bookseller, and is the largest contributor to a work which must be well known to you—I mean the Supplement to the Encyclopædia Britannica—the sale of which hurts that of a similar rival work published by the defender; and hence, the pursuer has been, for a series of years, the object of the defender's attacks in several publications, and especially in that which is now before you.

Gentlemen, many of these publications have been treated by my client with the contempt which they deserved; and even some of those comprehended in the issues might, if they had stood alone, have appeared to be too contemptible to be made the subject of a trial in a Court of Law. But they have been mixed up with charges of dishonesty, of corrupting the youth, and of a malignant enmity to the language of the Bible; and when such charges were brought before the world in the way adopted by the defender, it was not possible for Mr. Leslie to be silent, if he entertained any thoughts of preserving his usefulness, or maintaining his respectability and usefulness as a Professor, or his character as a man and an author.

He therefore brought this action; and I think I have already said enough to prepare you for considering it as a case of grave and serious importance; and if it shall be made out in evidence as it is represented in the issues, I have no doubt that you will give him ample redress.

The libel, as stated in the Issues, embraces four general classes of attack.

1st, There is a general impeachment of Mr. Leslie's reputation as a philosopher, and as a man of science. He is accused of ignorance and presumption, and even where his superiority as a man of science has been universally acknowledged, he has been treated as a plagiarist, as of secondary talents, and as deserving of contempt.

2d, He is charged with dishonesty, and collusion with others to impose upon the public.

3d, There is a malicious ridiculing of his person, which, taken in connection with the other charges, is evidently calculated to lower his estimation in society, and consequently his usefulness and comfort in the station in which he is placed.

4th, There is a malignant attempt to injure him in his usefulness and respectability as a public teacher; as having a spiteful enmity to our holy religion, and as being a corrupter of the religious principles of the young men who come as students to the University of Edinburgh.

These libels are contrived most artfully to destroy the character of the pursuer, Mr. Leslie; and they are mixed up with other matter which may be considered as fair criticism, so as to make their impression upon the minds of those at a distance, where Mr. Leslie is not so well known as he is here. That circumstance in the case is very useful in enabling a jury to detect the malice which dictated these libels. You will see this clearly when you come to put all together, more particularly in relation to the subject of the *fourth* issue, which bears the closest connection with all that precedes it.

Now, Gentlemen, let us go to the *first* Issue. The libellous article, of which a part is there stated, was published in the 35th number of 'Blackwood's Edinburgh Magazine,' being the number for February, 1820; and in that article, there is a collection of all the subjects of attack specified in the issues. The point on which they all hang is a casual remark of the pursuer, Mr. Leslie, on the characters or *letters* of the Hebrew alphabet, of which the writer of the article charges Mr. Leslie with being grossly ignorant; but which, I hope I shall be able to convince you in a few minutes, was merely made a pretence for a calumny against him of a much more serious nature.

Mr. Leslie had written and published a small book on the Philosophy of Arithmetic—a book, though small, of great research, and ingenuity; the very labour of which, amidst his

other studies, must be admitted to have been highly meritorious. It was the professed object of Mr. Leslie, in that work, to trace the progress of numeration in the earliest periods, and in various states of society. In doing this, the lights he has collected are very curious and instructive. He has shewn the different modes of notation used by the savages of the American continent, and the more advanced tribes of the Mexicans and Peruvians. He has explained the extensive system of the Chinese; the more limited methods of the Greeks and Romans; the improvement of Indian notation; and so on. And in his *Preface* to the work, (p. 11.) after adverting to the Grecian system with admiration, and comparing it with the Roman, he, at p. 218, in a note which bears reference to that p. 11 of the preface, alludes to the Hebrew mode of notation. It is in this note that the remark as to the Hebrew language, commented upon by the defender, occurs.

In treating of the Grecian mode of notation, Mr. Leslie had remarked upon the distribution of the twenty-four letters of their alphabet in three classes, corresponding to units, tens, and hundreds; and that, to complete the symbols for all the nine digits, an additional appropriate character had been introduced into each class; and then he says, "This beautiful system was vastly superior in clearness and simplicity to the combinations of strokes retained by the Romans, and transmitted by them to the nations of modern Europe. It was even tolerably fitted as an instrument of calculation, *to which the Roman numerals were totally inapplicable.*"

Then in the note referred to, the words in the libel are given, "The oriental nations appear generally to have represented the numbers as far as *one thousand*, by dividing their alphabet into three distinct classes. But the Hebrew, the rudest and poorest of all written languages, having only twenty-two letters, could advance no farther than 400; and to exhibit 500, 600, 700, 800, and 900, it had recourse to the clumsy expedient of addition, by joining 400 and 100, 400 and 200, 400 and 300, 400 and 400, and 400 with 400 and 100. The Arabic alphabet containing twenty-eight letters, supplied fully the three classes."

Now, Gentlemen, you see that there must be twenty-eight letters to make out the three nines, and the Hebrew alphabet containing only twenty-two letters, they had no way of supplying that defect, but to take 100 and add it to 400, in the manner stated in the note.

Gentlemen, it is very material that I should state to you,

that in this observation, Mr. Leslie referred *exclusively* to the *ancient* Hebrew, and this appears quite plain from a note by Mr. Leslie himself, at p. 242 of the same work, Second Edition, where he is speaking of the Mexican method of notation. He there says, "I have already observed, that the Mexicans, blending the binary and denary scales, carried forward their numeration by 400 and 8000, the powers of 20 or a score. The Javanese appear to have proceeded partly in the same way, for, in their language, the name of *one bit of gold* signifies 400, and *two bits* 800. The Jews, we have seen, followed nearly the same idea; the higher numbers as far as a thousand having been represented, in the *ancient Hebrew*, by repeating the alphabetic character for 400." You will observe, Gentlemen, that this is a statement contained in the second edition of this same work; and you cannot have a doubt as to what the *characters* of the language were to which Mr. Leslie referred, namely, the *ancient Hebrew*, when I explain to you what the ancient Hebrew was.

The ancient Hebrew character undoubtedly meant that character which is called by the learned, the *Samaritan*. A few words will explain to you what is meant by this. It is that language in which the five books of Moses were originally written; and it is quite clear, if this libeller had any meaning at all, he must have referred to the ancient Hebrew, because his supposition is, that Mr. Leslie meant to refer to the language and character of the Old Testament, as the rudest and poorest of all written languages.

You will remark besides, that Mr. Leslie does not refer to the Hebrew language *generally*, as being the rudest and poorest of all written languages, but only to the mode of numeration in use among the Hebrews.

I believe there is not another notice or reference in the whole book to the Hebrew language, or a word that can be twisted to such a meaning, as that Mr. Leslie referred to it as being the rudest and poorest of all languages, *merely because of its being the language of the Old Testament*; and certainly the remark in itself, referring so incidentally as it does to the power of numeration, might have been of no importance in any point of view; and to me it certainly does appear to be of no consequence, but a matter of absolute indifference, whether Mr. Leslie was right or wrong in the remark which he made; for you see that the essential part of the libel goes, not merely to accuse Mr. Leslie of gross ignorance of the Hebrew language, but to impute to him motives

which would be disgraceful to Mr. Leslie as a man, and destructive of his character as an instructor of youth.

Observe, Gentlemen, how this remark of Mr. Leslie's is misrepresented in this libel. Look at the issues before you, and you will find the writer commences thus : " LESLIE v. HEBREW ! " Observe that title, Gentlemen. " *Dublin, Jan. 20, 1820.* Mr. Editor, In *a trifling composition* I sent you some time ago, it was asserted that Professor Leslie had thought proper to pass a heavy censure on the Hebrew language in his *Philosophy of Arithmetic*, though, as I added, it could be proved from his own writings, nay, from the very passage that contained the charge, that he is *ignorant even of the alphabet* of the language on which he has thus presumed to offer an animadversion. The professional *dictum* alluded to is this ; " and so the words are quoted as in the remark ; and then the writer goes on thus : " The rudest and poorest of all written languages ? By my troth, Mr. John Leslie, these be bitter words ; but the latter part of the sentence, by displaying the *ignorance* of the Professor, happily renders *the railing* of the former perfectly innocent ; indeed *so much ignorance and impertinence* combined, will hardly be found in so short a compass in the works of any other writer of the smallest literary character. The *merest smatterer* in Hebrew, any one *who had read the first page of the grammar*, could have informed Mr. Leslie that the Hebrews had not recourse to the clumsy expedient of which he accuses them, and that their alphabet supplied them with characters sufficient for expressing numbers as far as a thousand. It is clear that the Professor was *totally unacquainted with the letters* of the language *he was criticizing*, or he would have known, that the *five finals*, (technically called *camnephatz*,) are used to express the five last hundreds ; and, therefore, that *the glory of inventing* the expedient, which he describes with such imposing minuteness of detail, is due entirely to himself. So much for his qualifications to decide on the merits of Hebrew."

I ask you, Gentlemen, is there not in all this a wilful misrepresentation of Mr. Leslie's remark ? This is clear to demonstration ; and there is a misrepresentation of the *fact*, besides, that Mr. Leslie misunderstood the alphabet of the language which he was criticizing. But the sting of it is this. The gross ignorance and impertinence, and the imposing minuteness of detail, with which he is accused by the writer of this libel, are all *preliminary* and introductive to what follows.

This libeller says, “ But it appears to me that he has a *particular pique* against the language : That his censure arises as much from *spleen* as *ignorance* ; for the Roman method of notation is still more clumsy than his fancied Hebrew system.” Then he goes on : “ They may be Arabic also, but to enter into the controversy respecting the comparative superiority of Hebrew and Arabic for the edification of Professor Leslie, would be as profitable as to set about demonstrating the seventeenth proposition of EUCLID’S 12th Book, to a person who did not know a right line from a curve, much less a polyhedron from a sphere.” Then he says, “ We must look, therefore, for some *other* reason, and perhaps we may find it in the *unhappy circumstances in which Hebrew is placed* ; IT IS THE LANGUAGE OF THE OLD TESTAMENT—the language, as a philosopher, like Mr. Hume, or a partizan of Mr. Hume’s, would say, *dedicated to superstition* ; and is, therefore, like every thing else connected with such a cause, to be attacked by that tolerant and equitable sect *per fas et nefas*.”

So you see here, Gentlemen, this libeller says plainly, Mr. Leslie made this remark, wilfully knowing that it was a false statement he was making ; not in ignorance of the language, even of the alphabet of which he is accused of gross ignorance, but *for the purpose and sole reason of throwing obloquy and contempt upon the language of the Old Testament, merely because it was so*. The pursuer, Mr. Leslie, is leagued with Mr. Hume, and other infidels of that sect, and is accused of attacking the language of the Bible, *per fas et nefas*. But the libeller does not stop here ; he goes on and says : “ But in doing so, I may be permitted to remark, there should be some little knowledge of the ground displayed. It is not good generalship to entrust, even the details of a siege, to a blundering gunner, or a rash volunteer, and I must consider the Professor as a most unfortunate, though perhaps courageous *enfant perdu*, after this specimen of his skill, although he may be enlightened enough in other respects, to be entitled to *sneer* at the credulity of Luther, the Dreams of the Christian Fathers, and the *Fancies of St. John*.”

Gentlemen, this last assertion is not true. It is false,—*there is no such thing in the book*. Then they go on. “ He may believe me when I tell him, that in the eyes of those who know any thing on the subject, he makes as awkward a figure as the most deficient digit he ever caused modify. He may also assure himself that the rule *ne sutor ultra crepidam*, (a shoemaker should not go beyond his *last*,) is truly a golden

one. He is *perhaps* a *mighty respectable third or fourth rate* mathematician, a refrigerator of any rate he pleases, and an arithmetician scarcely second to Cocker himself."

Gentlemen, who is the author of these libels, I have already told you, we do not know; but this defender, Mr. Blackwood, certainly must have very different ideas on the subject from all the rest of the world, when he permits himself to speak in these terms of the scientific character of Mr. Leslie. The libeller then goes on: "But when, on the strength of these qualifications, he thinks fit to step into philosophy, or to invade the province of critics and scholars, nothing can be more pitiful. And yet he blames Joseph Scaliger, (whose name as a man of learning, is *rather* higher than Mr. Leslie's as a mathematician,) for quitting his usual studies to meddle with mathematics. So easy is it to perceive the presumptive dogmatism of another, and to overlook our own."

I have told you already, Gentlemen, that all these issues run into each other, and you cannot do full justice to my client on this first issue, until you have considered the third and the fourth issues. The whole are founded on the pretence of Mr. Leslie's hatred to the language of the original Hebrew, from which false and groundless assumption all the injurious consequences are deduced.

It is, in my view of the case, in reality of no great importance, whether Mr. Leslie was right or wrong in the remark which he made on the Hebrew language. It was incidental to the subject of his work. It was not the subject of his book, which was a work upon arithmetic. And though, in the remark referred to, he had committed an error, that would not have been sufficient to justify the terms of opprobrium and reproach which are applied towards him in the passages I have now quoted.

But, Gentlemen, Mr. Leslie was *right* in the remark which he made. The whole statement of the libeller is not only false and malicious in the inferences, but it is false in its foundation, and was known by the libeller to be so, when he wrote this libel.

The fact is certain, and will be proved to you beyond question, that the ancient Hebrew alphabet consisted of twenty-two letters. The writer of the libel accuses Mr. Leslie of ignorance, because he takes no notice of the five *final* letters. I shall explain to you, in a few words, that Mr. Leslie was right, and that he was so upon two distinct grounds.

1st, The ancient Hebrew is that character in which the Five Books of Moses, (called the *Pentateuch*,) as well as the other books of the Old Testament, were originally written. It was what has since been called the *Samaritan* character. To convince you of this, I shall read to you a few extracts from one or two books. The first I refer to is the “Elements of Hebrew Grammar,” published by Dr. Charles Wilson, late Professor of Church History in the University of St. Andrew’s. This learned Professor states, in the first page of his book, “The Hebrew, like most other languages of the east, is written from the right to the left hand; and the books in this language commonly begin where those of Europe end. The alphabet consists of twenty-two letters, the names and figures of which are contained in the following table:”—and then he describes them.

And, on page 19th, in treating of the Samaritan character, he says, “The *present* Hebrew characters are generally believed to be the *Chaldaic*, introduced by Ezra *after the return of the Jews from the Babylonish captivity*. The old Hebrew characters were those of the Phœnicians, *now called the Samaritan*, because the Samaritan Pentateuch is written in them.”

I next refer you to Bishop Beveridge, a celebrated Prelate of the English Church, who, in his work entitled “*Institutionum Chronologicarum*,” Book ii the quarto edition, published 1669 and 1705, at page 212, in treating of the Samaritan or ancient Hebrew language, and the mode of notation in use among the Hebrews, has the following passage: “Per *Samaritanum* sive *antiquum* Hebræorum Alphabetum “ut *litteris finalibus destitutum*, OMNES NUMERI PERPETUO “HUNC IN MODUM EXPERIMUNTUR;” and then the numbers from 100 to 900 are set down *precisely in the same way in which Mr. Leslie has stated them*.

I also refer you to a work of great authority, by Father Richard Simon, a Frenchman, also of considerable antiquity, published in 1685, entitled, “*Histoire Critique du Vieux Testament*;” in which all this is fully explained—that *the ancient Hebrew character was the Samaritan* *.

And that you may understand this clearly, I will endea-

* He says, “ce qui confirme encore cette opinion c’est que les Samaritains ont conservé les anciens caracteres Hebreux qui étoient dès le tems de Moïse, et par conséquent les anciens exemplaires; au lieu que les Juifs prirent ceux des Caldéens au retour de leur captivité, dont ils se servent encore aujourd’hui.” *Histoire Critique*, p. 64.

your to explain it to you, that you may be enabled to follow the evidence which will be given by the learned gentlemen that are to be examined before you this day.

You will remember, Gentlemen, that, in the First Book of Kings, an account is given of the dissension which took place among the tribes of Israel in the reign of Rehoboam, the son of Solomon, when the tribes of Judah and Benjamin remained in Jerusalem under King Rehoboam, and the other ten tribes retired to Samaria, under Jeroboam. The first was called the kingdom of Judah, and the people themselves the Jews; the other the kingdom of Israel, and the people were termed Israelites. The Israelites were subsequently expelled from Samaria by the king of Assyria. Samaria was then occupied by heathens, who afterwards wished to be instructed in the laws of Moses, and for that purpose got a priest from the other tribes, which were then in Jerusalem. In that way they preserved among them the Books of Moses, written in the original character, which afterwards came to be called *the Samaritan*. I will read to you a passage from Father Simon, which I shall translate: “Esdras, or those who made a collection of the Scriptures after the captivity, wrote them in the Chaldaic character, to the end that the people who were accustomed to these letters during the time of the captivity might be able to read the law of Moses, and the other books. *The Samaritans, on the contrary, always preserved the ancient Hebrew, or the Phœnician character* *.”

From the circumstances which I have stated, these Samaritans became a mixed people, but they had preserved the Books of Moses in the original language, in the way I have stated. On the other hand, the tribes of Judah and Benjamin were carried away to Babylon, where they were kept in captivity for seventy years, and when they returned to Jerusalem from Babylon, they brought with them the Chaldean, or Chaldaic character, which they had learned during that time; and Esdras, finding that the people understood no other language, had the Books of Moses transcribed from the original Hebrew, or Samaritan character, into the Chaldaic, and this was called the Hebrew. From that comparatively recent period, (about 400 years before Christ,)

* Esdras, ou ceux qui firent le recueil des écritures après la captivité, l'écrivirent en caracteres Caldéens, afin que le Peuple qui s'étoit accoutumé à ces lettres pendant les tems de la captivité, pût lire la Loi de Moïse et les autres Livres les Samaritains au contraire ont toujours conservé les anciens caracteres Hebreux ou Phœnicien.

the Chaldaic character, as used by the Jews, was called Hebrew; while, on the other hand, the Phœnician language, which is the ancient Hebrew, was called the Samaritan. The Books themselves, and all the words, are the same; only the *character* of the language is different.

Now this old Samaritan language is the character in which the Books of Moses were originally written. It had no *final* letters, and consisted only of twenty-two letters to the end.

As to the question of numeration, I beg leave to refer to the work I have already mentioned—the work of Bishop Beveridge, at the same place. It will be put into your hands. He was a Bishop of the Church of England, as I have already mentioned; and, at the foot of page 212, he states the process of numeration by the Hebrews precisely in the same way that Mr. Leslie has done, in the remark in his Note. The characters of the alphabet go to 400; then, as there were no other means of increasing the number, they took the character signifying 400, and added the character denoting 100, to make 500; then, in the same manner, they took the 400, and the character signifying 200, to make 600, and so on to 800; and then they took the 400 with 400, and the character signifying 100, to make 900; and so on, adding the one to the other; and introduces this by the passage I have before quoted, at p. 212, which I ought to have translated, thus: “By the Samaritan, or *ancient Hebrew* alphabet, as it *wants the final letters*, all the numbers are constantly expressed in this manner;” and so he states them exactly as Mr. Leslie has done in his Note.

Then, Gentlemen, here is another Grammar, by Joseph Frey, in which he states the Hebrew letters as being *twenty-two* in number; and he gives these numbers in the same way that Mr. Leslie has done. He is speaking, you will observe, of the modern Hebrew, or Chaldaic character; and *even as to this*, he states *both* the mode represented by Mr. Leslie, and the other mode by means of the *final* letters referred to by the defender. But this I have still to explain.

On this ground, then, Mr. Leslie is *right*, that the *ancient* Hebrew alphabet contained only *twenty-two* characters, and that the numerals could only be expressed in those characters in the way he has stated in the Note.

But this is not all; for, 2dly, Even the Chaldaic, or modern Hebrew, contains only *twenty-two* letters; and it was only at a late period that the five *final* letters were added. There were varied forms of *five* of the twenty-two characters

previously in use, and employed to denote the ending of a word; and, after obtaining these five forms of letters, the Hebrews were no longer under a necessity of using the clumsy expedient of addition, of adding 100 to 400, and so on, in numeration, because they could then take these five final letters to denote the remaining 500.

At what period these five final letters were introduced, is not precisely ascertained. Nobody, I believe, maintains, that they were in use before the return of the Jews from the Babylonish captivity; and there is considerable reason to think that they were not known at the date of the Septuagint translation of the Bible into Greek, which happened in the first year of the reign of Ptolemy Philadelphus, king of Egypt, or between 272 and 283 years before the Christian era. In the opinion of Bishop Kennicott, the final letters were not known at that period. In translating the Prophecies of Zechariah, (c. ii. v. 11.) *two* words, signifying, "*Thus the poor,*" (kim ani) have been run into one, in a way which could not have happened if the *final letters* had been then in use. It is impossible that this mistake could have been committed, if the interpreter had been aware of the existence of these five final letters in the language he was translating. I shall prove this to your satisfaction, by some of the best Hebrew scholars of the present day. Even if there were difference of opinion on such a point, it would be enough for this case, to shew, that Mr. Leslie was clearly entitled to state the matter in the way he did; and no one is entitled to say that he did so, or that he stepped out of his way in order to attack the Hebrew language, *merely because it was the language of Scripture*.

This libeller knew all this; for, Gentlemen, you see he refers to these five final letters; and he tells you they are used to express the five last hundreds. When were they so first used? Mr. Whiston, a celebrated character, in the Memoirs of his Life, tells us that it was about the beginning of the second century of the Christian era. He says, "That entire change which had been made in the character of the Hebrew Bible, from the old Samaritan to the new Chaldee, was not done by Ezra, as the modern Jews pretend, but by the Jews themselves, about the beginning of the second century of Christianity." Whether Whiston was right or wrong in this statement, is a matter of no consequence. This man, this libeller, knew that the final letters were never in the ancient Hebrew, and were of very late introduction

even in the Chaldaic Hebrew ; and if he was so ignorant of the fact, or had not even looked at a Hebrew Grammar, his making these representations and charges against Mr. Leslie upon such grounds, only indicated his determination to throw obloquy on Mr. Leslie, without being at the pains to inquire into the grounds on which he founded it ; and the libel was evidently intended for persons who had no knowledge to enable them to detect the error.

Observe, Gentlemen, there is only *one* notice taken of the Hebrew language, in the whole of this book ; Mr. Leslie has made no other remark on the subject, and all he says is this : “ The oriental nations appear generally to have represented the numbers as far as 1000, by dividing their alphabet into three distinct classes. But the Hebrew, the rudest and poorest of all written languages, *having only twenty-two letters*, could advance no farther than 400 ; and to exhibit 500, 600, 700, 800, and 900, it had recourse to the clumsy expedient of addition, by joining 400 and 100, 400 and 200, 400 and 300, 400 and 400, and 400 with 400 and 100.” That is all he said ; and I ask you, Gentlemen, if the fact be as I have now explained it to you, what fault has Mr. Leslie committed ? Is he an enemy to the Bible, merely because he cannot say what is not true of the original language of Scripture, or that he does mention what he believes to be the truth regarding it

It is plain that, if he had said that the Hebrew alphabet consisted of *twenty-seven letters*, the libeller would have had a much better pretext for accusing him of gross ignorance, or for accusing him of neglect, in paying so little attention to the language of the Bible, as to state, with such evident incorrectness. If he had taken no notice of the Hebrew language in his book, what would the libeller have said ? If Mr. Leslie had noticed the whole of the ancient languages excepting the Hebrew, and had taken no notice whatever of the Hebrew,—of that language in which the records of our holy religion, and of the most authentic history of the world, are written,—what would he not have said ? Would he not have said that Mr. Leslie had avoided doing so on purpose, *merely because it was the language of Revelation* ? Would he not have said, he notices all the other ancient languages, and leaves out this, merely to throw contempt on that language, because it was the language of religion ? With this libeller no course would have been safe that Mr. Leslie could possibly have taken.

But it is said, that Mr. Leslie calls the Hebrew “ the

rudest and poorest of all written languages." The libeller says, in this Mr. Leslie is wrong. But you will observe this is not said by Mr. Leslie of the language *generally*, but only in reference to one particular subject,—that of numeration. He says, "the oriental nations appear generally to have represented the numbers as far as 1000, by dividing their alphabet into three distinct classes—that is, the three nines. But, the Hebrew, the rudest and poorest of all written languages, *having only twenty-two letters*, could advance no farther than 400." These words "*having only twenty-two letters*," *qualify* what goes before. It is *in this respect*, that he speaks of the language as *rude* or *poor*. He says, it is the rudest and poorest of all written languages, *for the particular purpose of numeration* merely, and it is a mere perversion of the language of Mr. Leslie, to represent him as speaking thus of the Hebrew language, *in any other sense*.

Accordingly, this libeller finds it necessary to join issue with Mr. Leslie on this point, and to deny *the fact* that the Hebrew alphabet has only twenty-two letters, saying that it has twenty-seven. To that the witnesses will speak, by and by. That Mr. Leslie had no intention whatever of alluding to this poverty and rudeness of the Hebrew language, but in reference to this particular subject of numeration, I will shew you clearly by other passages in the book itself.

In the notes and illustrations subjoined to the work, (page 209,) he says, "Philosophers, misled by the hasty and careless reports of travellers, have generally much underrated the attainments of savage tribes in the art of numeration. From the mere *scantiness* of the terms which a *rude* people employs to signify numbers, it would, at least, be rash to infer the narrow range of their application. The language even of the most polished nations, when traced to its radical form, is yet found to betray *uncommon poverty* in numerical expression." Now, look at page 241, at the bottom, where he is speaking of another language; he writes thus: "In the *Ende* language, one of the dialects of the Flores, *four* is called *wutu*, and *eight* is denominated merely *two fours*. The *same poverty* is betrayed in the terms for the other digits. Thus, proceeding from *five* as the root, *six* is expressed by *five* and *one*, and seven by *five* and *two*."

And, Gentlemen, you will have observed in this Issue, that Mr. Leslie is alleged to have overlooked the poverty of

the *Roman* language. Gentlemen, Mr. Leslie does refer to the poverty of the Roman language. He says, in the introduction, at p. 11, "This beautiful system, (that of the Greeks,) was vastly superior in clearness and simplicity to the combination of strokes retained by the Romans, and transmitted by them to the nations of modern Europe. It was even tolerably fitted as an instrument of calculation, to which the Roman numerals were totally inapplicable." Farther, he says at page 237 in the notes, "after the present numerals had been generally adopted, it was the practice throughout Europe to reduce the rules of arithmetic, like those of the Latin grammar, to memorial verses." He then gives a specimen of such verses, and adds,—“Such memorial verses are frequently met with in the older books of arithmetic, evidently imitating the Latin grammars, which commonly delivered a mass of rules in rude and harsh metre,—a barbarous practice, not yet entirely laid aside in our schools.” And then, there is another passage in the notes, at page 220, as to the Greek numerals, and also in reference to the poverty of the Roman language in respect to numeration. “Such is the beautiful system of Greek numerals, so vastly superior in clearness and simplicity to the Roman combination of strokes. It was even tolerably fitted as an instrument of calculation. Hence the Greeks early laid aside the use of the *abacus*; while the Romans, who never shewed any taste for science, were, from the total inaptitude of their numerical symbols, obliged to practise the same laborious manipulation.” Now, is it true, that any censure of Mr. Leslie can arise from this, as if he had not noticed the imperfection of the Roman language as well as the Hebrew, when both in the text, and in the notes, he animadverts on the clumsiness of the Roman, equally as on that of the Hebrew mode of notation.

In applying yourselves to the consideration of the first issue, it may be necessary to connect it with the third, and also with the fourth issues; but observe, Gentlemen, that in the third issue, the words used by the libeller are varied. It is not the language of the *Old Testament* that Mr. Leslie is accused of having attacked; but this libeller says, “I asserted that he did not know even a letter of the tongue he had the impudence to criticise, and I proved my assertion—I leave the decision of the question to any Hebraist, to any man of common sense in the land; I proved that he was actuated by a hostility to the language of *Revelation*,

simply because it was so, and I defy any one to refute me : And on page 6th, he calls it “ the language of the *Bible*.” Now, considering it as the language of *Revelation* which is thus said to be attacked, Mr. Leslie, as you have seen in his book, was loud in his applause of the Greek language, in which a most important part of the Scriptures is written ; and the malignity of the remark, in accusing Mr. Leslie of being an enemy to the language of *Revelation*, is manifest from what he has written in this book, in which you see him extolling and praising the Greek language, which is the language in which the most important part of the Christian Revelation was originally written.

But it is out of this single, and itself very simple remark, upon the Hebrew language, that the pursuer is virulently and malignantly accused of ignorance and impertinence, and of attacking the Hebrew language, merely because it is the language of the Bible. He is styled an *enfant perdu*, the rashest and most desperate of all adventurers, in defending a system of impiety and infidelity, and is accused of wilfully holding forth to the contempt of all the world the language of that holy religion, which we, as Christians, hold in reverence.

We now come to the *second* issue. This issue, Gentlemen, leads into discussions which are as little familiar to us as those we have now been engaged in. It begins thus, “ The King of the Cockneys knows no more of Greek than Professor Johnny Leslie does of Hebrew.” I shall say nothing, Gentlemen, of the contemptuous style of these expressions. The writer goes on, “ By the way, on looking over the last number of Dr. Watt’s *Bibliotheca Britannica*, I have discovered, with amazement, that that celebrated personage was a poet in his youth :—why don’t you review his Phoenix Park, Killarney, &c. ? I have copies of both classical productions at your service. Why, finally, did you allow Dr. Brewster to have the merit of pointing out Leslie’s *monstrous plagiarism of his theory of heat*, from an old volume of the Philosophical Transactions ? For shame.”

Here, Gentlemen, we have a different subject, but still it is introduced in connection with a repetition of the former libel. Let us see how this libeller uses it. He accuses Mr. Leslie of *wilful imposition* on the philosophical world ; and endeavours, by any little power he possesses, to deprive

him of that celebrity which he has so justly and honourably acquired.

Mr. Leslie had published a work upon the theory of heat in 1804. He was afterwards appointed the successor of M^r L^aurin and Playfair in the chair of mathematics in the University of Edinburgh—he had successfully prosecuted his studies and experiments, and for his experiments on heat, he got various medals, particularly from the Royal Society of London. In 1810, Mr. Leslie made a discovery of considerable importance, regarding the artificial congelation of water;—not a discovery of the *principles* upon which the experiment was founded, and the effect produced; but an *ascertainment of the power* of those principles, and of the *mode of applying them* to the purpose in view. For this discovery he was applauded all over Europe—he was, on the death of Professor Playfair, elected to the chair of Natural Philosophy in the University of this city, which had been successively filled by such men as Robison and Playfair; and he was soon after elected a member of the Institute of France, which, it is known, admits only *five* strangers into its body, in the physical department; and, although he was opposed by five candidates of acknowledged celebrity, yet when the votes were taken in the academy, on the 30th of October, 1820, Mr. Leslie was elected a corresponding member by a majority of thirty-three votes out of thirty-seven. The writer of this article, burning with jealousy over this account, calls Mr. Leslie's Discovery of his Theory of Heat, *a monstrous plagiarism*, and directly accuses him of a wilful imposition on the public.

This is a very strange charge,—that Mr. Leslie imposed upon the whole philosophers of Europe, and was universally applauded for a discovery as his, which the defender says stood recorded, in the year 1777, in the Philosophical Transactions of the Royal Society of London. This is utterly absurd and incredible. It cannot be believed for a moment. The papers recorded in these Transactions are as well known to the philosophical world as the Elements of Euclid. It is impossible to say they are not. Yet here you find a counter issue, in which the defender asserts, *and he must prove his assertions*, or fail on this issue,—“Whether the pursuer held himself forth as the author of certain discoveries in regard to freezing or artificial congelation, by means of evaporation under an exhausted receiver; he, the pursuer, knowing, or being aware, that the same or si-

milar discoveries were previously pointed out or described in a paper in the 67th volume of the Philosophical Transactions of the Royal Society of London, intituled, ‘An Account of some Experiments made with an Air-Pump, on Mr. Smeaton’s Principle; together with some experiments with a common Air-Pump. By Mr. Edward Nairne, F.R.S.’” The question is, Whether he can make out this issue. I am not qualified to state this matter to you in a scientific way, and, if I were, probably all of you would not understand it. But, having taken some pains to understand the subject in a common sense way, perhaps the explanation I may give may be of use to you in following the statements of these witnesses who will be examined. And, if I should fall into any mistake, it will be corrected by their more accurate explanations.

Mr. Leslie had previously invented a particular hygrometer, an instrument, the purpose of which is, to measure the degrees of moisture and dryness of air. It is an instrument now well known, and in universal use. He ascertained by it, that air became drier and drier as it became rarefied or divested of moisture; and he remarked, that salt of tartar attracts moisture from common air. But in his experiments by means of the air-pump, in an exhausted receiver, he found that when the air became greatly rarefied, the salt of tartar began to give back moisture to the air. Observing this, he tried an acid, having a strong power of absorbing moisture from air. Sulphuric acid is a strong absorbent, though not hitherto well known in its effects under the receiver of an air-pump. Mr. Leslie expected that, by the action of the air-pump, the air would become drier and drier, till it reached a certain point, when the rarefaction being brought to a great height, the absorbent power of the sulphuric acid would cease, and it would give back the moisture to the air. But he found the reverse of all this. For, by his hygrometer, he ascertained that the dryness increased with the operation of the air-pump, while the moisture was absorbed by means of the sulphuric acid;—the melted coating of the hygrometer immediately became white, and much higher degrees of cold were marked. Mr. Leslie immediately saw the consequences of this result. First, he saw that sulphuric acid was a powerful absorbent of moisture *in vacuo*, and that cold was produced by the dryness of air, and that, too, *without rapidity* in the process of evaporation. Formerly, though it was very well

known that cold might be produced by evaporation, it was the commonly received opinion that it was by the *rapidity* of the evaporation that cold was produced. The effect of this discovery was, that Mr. Leslie was enabled to freeze water, by means of the absorbent power of sulphuric acid applied under the exhausted receiver of an air-pump, and this *ad infinitum*; and ultimately, even to freeze quicksilver, which was never before done.

It must be evident to you, Gentlemen, from this description which I have given of Mr. Leslie's discovery, that all idea of plagiarism is destroyed, by the fact, that the result which Mr. Leslie obtained was different from what he had expected. He expected that the sulphuric acid would not carry on the dryness of the air; and yet he found that it went on till it produced all these consequences. He immediately communicated his discovery to others; he constructed an extensive apparatus at considerable expense, and repeated his experiments on a more extended scale. He wrote a statement of them to La Place, describing the process he had used, and the results obtained, which was read and entered on the Journals of the Institute. The experiment was performed successfully at Paris, and over all France and Italy. It was not so speedily performed with success in this country, because our chemists did not attend so minutely to the size and form of the vessels described by Mr. Leslie as was necessary. Sir Humphry Davy failed in the attempt to perform the experiment before the Royal Society in London from some cause of that nature, and Mr. Leslie found that doubts were entertained in London, when he went there, in the following summer, whether the experiment could be performed with success. He, however, exhibited it on a great scale in London successfully, and in very hot weather, and convinced every body that the discovery he had made stood on sound and fundamental principles.

The discovery being thus circulated and acknowledged all over Europe and America, Mr. Leslie's book, explanatory of it, was published in 1813; and surely it is scarcely possible now for any one to pretend, after the lapse of a period of more than ten years, that this discovery was not made by Mr. Leslie. But the defender thought he would deeply wound the character and feelings of the pursuer, by accusing him of plagiarism in this instance; and therefore he has said, that in an account given by Mr. Nairne of his experiments,

published in the Philosophical Transactions upwards of forty years ago, the same experiments were made by that gentleman.

Gentlemen, I have endeavoured to describe to you the nature of Mr. Leslie's experiment; and without any knowledge of chemistry, I think, at least, that I have a clear understanding of it. But I have in vain studied Mr. Nairne's account of his *experiments*, in reference to this question, which I confess I do not understand, and therefore shall not attempt particularly to describe to you. But the *object* of these experiments, was to explain the operation of a certain instrument, invented by Smeaton, called a pear-gauge, the purpose of which was to ascertain the exhaustion produced by means of the air-pump, and in that account of Nairne's, this libeller pretends to find Mr. Leslie's invention. In these experiments of Mr. Nairne, he found results which he declared he did not understand. In one of these experiments, he put sulphuric acid into the receiver of an air-pump. An absorption and dryness of air was the result, and the pear-gage did not indicate that degree of exhaustion which he had expected would have been produced. But it is evident that he had not at all contemplated the production of cold in any one of these experiments with sulphuric acid. The second experiment was different. It was well known that ether, by means of evaporation, produces cold. Mr. Nairne put ether into the receiver of the air-pump; *but he applied no sulphuric acid*, and he used no absorbent power. And at the bottom of the receiver, he found two or three globules of ice. As I understand it, Mr. Nairne committed an evident mistake, in supposing that the *ether* was frozen; and that there must have been some drops of water, which was commonly put into the phial for carrying ether more securely, so as to prevent the escape of the air, and that it must have been this *water* that was congealed by the process of evaporation, a result which has always been known. But there being no absorbent power there, there were no means of *carrying on* the congelation, as in Mr. Leslie's experiment, where the absorbent power draws off the moisture, and thus the congelation is carried on *ad infinitum*, and would do so for ever, until the whole materials composing the water and the ice were drawn up and absorbed by the sulphuric acid.

These experiments of Nairne had been made before; *they were not new*. Dr. Black and Dr. Cullen had made

them repeatedly before, and they were very little attended to. Professor Robison wrote an article "Pneumatics," about the year 1798, in which he speaks of Mr. Nairne's experiments in these terms;—I refer to the article in the *Encyclopædia Britannica*, page 687. "The only obscure part of this account, is what relates to the composition of the matter which filled the pear-gauge before the admission of the mercury. It is not easy to see how the vapour of the receiver comes in by a narrow mouth, while the air is coming out of the same passage. Accordingly it requires a *very long time* to produce this extreme rarefaction in the pear-gauge, and there are great irregularities in any two succeeding experiments, as may be seen by looking at Mr. Nairne's account of them in the *Philosophical Transactions*, vol. lxxvii. Some vapours appear to have mixed much more readily with the air than others; and there are some *unaccountable cases*, where vitriolic acid and *sulphureous bodies* were included, in which the diminution of density indicated by the pear-gauge, was uniformly less than the diminution of elasticity indicated by the barometer gauge. It is enough for us at present to have established by unquestionable facts this production of elastic vapour, and the necessity of attending to it, both in the construction of the air-pump, and in drawing results from experiments exhibited in it."

Professor Robison sees no such discovery in Nairne as that made by Mr. Leslie. He states that Mr. Nairne's experiments are *obscure*, and his results *unaccountable*. Now, I ask this plain question, and which I hold to be decisive of this case. Did any body else do the thing before it was done by Mr. Leslie? Did any one, before this, freeze water *ad infinitum*, as he has done it? Did any one, before him, freeze mercury as he has done it? You have seen that they could not do it—that in this country the ablest chemists who tried it failed in the experiment, even after Mr. Leslie had pointed out the way, until he personally showed them how to do it. It must be unnecessary for me to say that Nairne saw no such result. It is true, that sulphuric acid absorbs moisture. It is true, that by the rarefaction of air cold is produced. But who will take upon him to say, that no discovery in science is made in the combining of these two principles? This would just be saying that no discovery in science could possibly be made. Every discovery in science is the result of a combination of prin-

ciples in nature, existing before, and which are known to be so, before the discovery is made. Neither Professor Robison, nor Professor Playfair, nor La. Place, nor Dr. Brewster, nor any other philosopher, ever attempted to perform this experiment until it was done by Mr. Leslie.

Gentlemen, there is nothing new under the sun. The Copernican system, and the Newtonian system, are nothing more than a deduction of principles from known facts. From the falling of a stone, the principle of gravitation was deduced; and after the discovery of America was made by Columbus, there were not wanting men to inform us, that this could easily have been found out, from attending to first principles. Gentlemen, it is always easy to entertain and to utter spiteful opinions, after a discovery has been made, and to say, that the principles which gave rise to the discovery were known before. I put it to you, Gentlemen, did this writer, this libeller, *did* MR. BLACKWOOD, *know it before?*

I submit to you, Gentlemen, that Mr. Leslie alone had clearly the right to claim the merit of this discovery. The malice of the article in the issue must therefore be obvious to every common reader. It is not an article of fair criticism in a work of science; it is intended for further effect, —to lead to the conclusion, that Mr. Leslie, in claiming to be the author of this discovery, had practised *a gross and wilful imposition on the public*, and had claimed that as his own which he knew belonged exclusively to another.

The *third* issue, Gentlemen, to which we now come, is a second *collection* of the whole matters of attack against the pursuer; and it is also a *particular* attack upon him, as it accuses him directly of *dishonesty*. I pray your attention, in the first place, to the separate particulars stated in this issue.

At the top of the 5th page of the issues—alluding to the second edition of the pursuer's "Philosophy of Arithmetic"—the writer expresses his surprise, that Mr. Leslie had not retracted the unlucky note, which this libeller says had convicted him of ignorance. He says, "As I am on the subject, I may remark, that I was at first a little surprised to find in the second edition of the Philosophy of Arithmetic, which was announced since I had pointed out Leslie's mistake, he had not retracted the unlucky note which convicted him of ignorance. But, on inspection of the work, my wonder ceased; for I perceived that the new edi-

tion was nothing more than the old one, *with a fresh lying title page*, and a few additional leaves; in short, only a *collusion between an honest bookseller, and a doubly honest Professor, to impose on the public, and get rid of the remaining copies of an unsaleable work*. Here, then, is the vile offence against decency, as committed by me,"—and so forth.

Gentlemen, even the *words* here employed are intolerable. The word *lying* is introduced, and is directed against Mr. Leslie, in a public work—a word which is not even allowed to be made use of in judicial proceedings, and the use of which is unjustifiable in any circumstances. But what is the *substance* of the charge against the pursuer? It is that of *dishonesty*, in imposing upon the public, as a revised and improved copy, what was only an old copy of an unsaleable work. And here again, Gentlemen, the defender has put in issue, a plea in justification, which you will find at the foot of the 7th page of the issues, in the following terms:—"It being admitted that a book, intituled the 'Philosophy of Arithmetic,' was published by the pursuer in the year 1820, and is described in the title-page as a second edition improved and enlarged, meaning thereby, that the said book, described as a second edition, was enlarged and improved, in comparison with the first edition of the said book:—Whether the pursuer, with the bookseller, in holding out to the public the book first aforesaid, as a second edition, enlarged and improved, *was guilty of a dishonest attempt to impose upon the public?*" That they *undertake to prove*, and they must show you, that it was, on the part of the pursuer, Mr. Leslie, A DISHONEST ATTEMPT TO IMPOSE UPON THE PUBLIC.

Gentlemen, to entitle a publisher to call a book a second edition, it is not necessary that the whole of the first edition of the work be reprinted. Dr. Johnson defines an "*edition*" to be, "*publication of something, especially a book*." He calls a "*new edition*" of it "*republication generally, with some revisal and correction;*" and nobody knows this better than Mr. Blackwood, that a publisher sometimes throws off a large number of copies of a book from the first impression, only a small part of which may be sold, and then the book is returned to the author, or it may remain in the hands of the bookseller; the author makes such alterations upon it as he thinks necessary, and then the remainder of the work goes forth to the public, and is sold as a se-

cond edition. But, Gentlemen, you will remark here, in Mr. Leslie's work, that there are a variety of plates and figures used throughout the work, in almost every page of it, of a very unusual and valuable description; that these plates were quite useless for any other purpose, and that a great loss, both of time and expense to the author would be sustained, if they required to be renewed for a second edition, should the first edition speedily run out, from the small number of copies thrown off; and, therefore, in such cases, it is a common and established practice to throw off a large number of copies at the first, reserving to the author his right to revise and alter the copies which may remain unsold, and to republish them as a second revised and improved edition of the work.

Gentlemen, in this case, no fewer than 900 copies of Mr. Leslie's Book on Arithmetic were sold before it was considered necessary to put forth a second edition. Now, you will observe, that Mr. Leslie materially altered and improved this second edition; and when I was reading to you a passage from the notes, I think I heard the other party say, "O, that is only to be found in this *second* edition," so that it is reasonable to suppose, that something material is to be found in the second edition which was not in the first. In point of fact, it was necessary that a second edition of the work should be announced, in order to give to the public full notice of the material additions and alterations which had been made. It became necessary to print considerable additions to the book, and you will see, on looking at it, that, from page 240, to the end, this *second* edition contains 18 pages of entirely new matter, more than is to be found in the first edition. But this is not all; you will please attend to the words of the issue which charges the pursuer with being guilty of collusion with a bookseller to "*impose upon the public*, and get rid of the remaining copies of an unsaleable work." What does this mean, but that the pursuer was guilty of imposition upon the public, by selling to them as an improved edition, what was not so? Mr. Leslie did not do this; a large table of quarter-squares was added, besides other valuable matter; and, in the preface to this second edition, I pray you to observe what he himself says of it. He says, "In this edition I have introduced considerable improvements, and other useful tables are inserted in the folding sheet; but the most valuable addition that I have made consists in

the table of quarter-squares, near the end of the volume, which, to a certain extent, perform the multiplication of numbers more expeditiously than even logarithms themselves." Here, Gentlemen, Mr. Leslie tells the public what the alterations are which he did make; and is it to be tolerated, that Mr. Blackwood should say that he did nothing more than publish the old edition, with a *fresh lying title page*, and a *few additional leaves*, and was guilty of *collusion* with an *honest* bookseller—(by *honest*, he tells you elsewhere he meant *dishonest*,) and practised a *dishonest attempt to impose upon the public*?

Gentlemen, there is a part of this third issue which the other party seems disposed to treat very lightly. I am very much mistaken, indeed, if it appears so to you. After alluding to the Edinburgh Review, and questioning the inspiration of that worthy oracle, this libeller says, "And, as to the Professor's own part in its lucubrations, why, his impudent puffings of himself, and ignorant sneerings at others, have often made me liken Leslie the Reviewer, to some enormous overfed pet of the parrot species, stuck up at a garrot window, and occupied all day with saying 'pretty poll, pretty poll,' to itself. 'Foul witch, foul witch,' to every passer by.—Look *now*, I beseech you, at his article on the North-West Passage!!!"

Gentlemen, you see it is impossible to read this passage, even after it has been read and re-read, without producing laughter at the expense of the pursuer, Mr. Leslie. (The learned Gentleman here referred to the risible sensations produced in the Court at his reading of this passage.) And, however this libeller may take it, it is a wicked and malicious attempt to turn Mr. Leslie into ridicule, and which we conceive affords to him a good ground for claiming damages against the defender.

Gentlemen, here is a justification also attempted from page eight to the end of the issues, as being matter of *fair* criticism upon Mr. Leslie's writings. What the defender will attempt to prove under this issue I know not: I must leave it to him to tell you what he will try to do; and whether all that he can possibly prove, or state to you, will be any justification of this attack on the pursuer, I leave it to you to determine. We call upon the defender to prove this issue, and if he lead any proof, which I hardly think he shall do, my brother, Mr. Jeffrey, will remark on that proof, in a much abler manner than I could pretend to do.

I may be permitted, however, to make one observation here. A reviewer in a periodical work is not intended to be known, and the public seldom inquire who is the writer of the articles that appear in the work. And when a person sits down to write in such a literary work, it is manifest, that if he writes upon and criticises a subject in which any thing material has been done by himself, he cannot write in an unknown or concealed character, without noticing himself in his critique upon the work, because any attempt to take no notice of himself, or to affect any modesty in his criticism upon the author of the publication under review, would lead immediately to the conclusion that the critique was written by himself, and the public would see through the disguise, which is a thing that is not intended in the publication of such works. Even if they should prove that the pursuer, Mr. Leslie, did write and compose any part of the Reviews noticed in this counter-issue, (and I think it will be very difficult for them to do so,—however they may try their hand,) it will be very easy to account for it, without imputing it to vanity and absurdity on the part of the pursuer.

I have another remark to make here. Mr. Leslie is accused of making an ignorant attack upon others, for not using the instruments he invented. In the passage quoted in the issues, at the foot of page 9th, no attack will be found. It is there said, merely,—“ M. Humboldt laments that he had not an opportunity of trying, within the tropics, the photometer with which Mr. Leslie has enriched our philosophical apparatus. We heartily join him in that feeling, but we regret still more that he had not employed the hygrometer which the same philosopher had constructed,” &c. It is only here said that the writer regrets Mr. Leslie's instruments were not in the hands of M. Humboldt, at the time of making his observations; but there is no attack made on any one.

Holding, then, these assertions to be as false as the rest, you will attend to the relevancy of this issue. Is it possible to disguise for a moment, that the object of the passage in this fourth issue was to ridicule the person of the pursuer, Mr. Leslie, and to raise a laugh at his expense, and to render him contemptible in the eyes of the world? This is undoubtedly a relevant ground of charge, upon which the pursuer is entitled to call for damages; and to prove this, I will read to you a few passages from Holt's book on the English law of libel. That author has a whole

chapter in which he treats "OF LIBELS WHICH EXPOSE A MAN TO RIDICULE, SCORN," &c. &c. In the beginning of that chapter, at page 210, he says,—“ The next class of libels is that which, by holding up a man to scorn and ridicule, and, still more, to any stronger feeling of contempt or execration, impair him in the enjoyment of general society, and injure those imperfect rights of friendly intercourse and mutual benevolence which man has with respect to man.” Then he has another passage, which I need not read to you, as it relates to a technical distinction of the English law, not recognised in the law of Scotland. And then he says, (page 213,) “ As every person desires to appear agreeable in life, and must be highly provoked by such ridiculous representations as tend to lessen him in the esteem of the world, and, by the sure effect of ridicule, to cast a shade upon his talents and virtues, it has been holden, that not only charges of a flagrant nature, and which reflect a moral turpitude on the party, are libellous, but also such as set him in a *scurrilous* and *ignominious* light ; for these reflections equally *create ill blood, and provoke the parties to acts of revenge, and breaches of the peace.*”

A JURYMAN.—Be so good as read the passage which you have omitted.

LORD CHIEF COMMISSIONER.—Mr. Moncrieff, I do not stop you from reading from Mr. Holt's book, by way of illustration of your argument ; but it would be much better to state the point as established in your own law.

Mr. MONCRIEFF.—I refer to it merely in illustration. The passage which I omitted to read, explains the difference between words *spoken* and words *written*, a distinction not known in our law, so that it can be of no use to read it here. The author continues : “ Every thing, therefore, written of another, which holds him up to that scorn and ridicule that might reasonably (that is, according to our natural passions) be considered as provoking him to a breach of peace, is a libel.

“ And, in the same manner, all such written abuse as may be fairly intended to impair him in the enjoyment of society, or to throw a contempt on him which might affect his general fortune and comfort, is a positive injury, and therefore the subject of an action on the case.

“ *Scandalous matter is not necessary to make a libel.* It is enough if the defendant induce an ill opinion to be had

of the plaintiff, or to make him contemptible and ridiculous."

In another passage he says,—“ In a larger sense, the notion of a libel may be applied to any defamations whatever, expressed either by signs or pictures, as by fixing up a gallows against a man's door, and by painting him in a shameful or ignominious manner.”

Again : “ In a special action on the case, the plaintiff declares that he is a hackney-coachman ; and the defendant, with intent to disgrace him, did ride to Skimmington, and describes how ; thereby surmising that his wife had beaten him, and by reason thereof, persons who formerly used him, refused to come into his coach *ad damnum*.— Upon not guilty, it was found for the plaintiff.”—“ So carrying a fellow about with horns, and bowing at B.'s door.”

Then he quotes at page 216, the following case : “ In *Villars v. Monsley*, it was holden, that an action would lie for publishing any thing in writing, which tends to render another ridiculous. “ This was an action upon the case against the defendant, for maliciously writing and publishing a libel upon the plaintiff, in the words following, viz.

“ Old Villars, so strong of brimstone you smell,
As if not long since you had got out of hell,
But this damnable smell I no longer can bear,
Therefore I desire you would come no more here ;
You old stinking, old nasty, old itchy, old toad,
If you come any more, you shall pay for your board,
You'll therefore take this as a warning from me,
And never more enter the doors, while they belong to J. P.”

The defendant pleaded not guilty ; but a verdict was found for the pursuer. The imputation cast upon Villars in this libel was, that he had the *itch*, which was not true, and the libel consisted in *holding him up to laughter and ridicule*.

Such examples are important in this view. The other party will tell you, that all they wrote of the pursuer was *fair* discussion and criticism of his works as an author. I ask you, if the passage referred to in the issues is a *fair* criticism on the pursuer's works ; or rather, is it not a *contemptible digression from the object of fair criticism, in order to ridicule the person of the pursuer* ? No, Gentlemen, it bears no marks of *fair* criticism. It shews the malicious nature of the whole publication, and that its main design was to hold up to ridicule the person, and to destroy the comfort

and character, of Mr. Leslie, as an individual, an Author, and as a Professor.

After this, the libel in the fourth issue goes on to ridicule *all* Mr. Leslie's pretensions, whether in mathematics or in other branches of science. Mr. Leslie's character in mathematical science are well known. He published a book on the subject, which is here, as usual, treated with contempt; but of which no fewer than 5000 copies were sold before the year 1809; yet this libeller has stated that it had no merit—that it did not contain an original mathematical fact of the smallest value—that he had failed in proving his first proposition, which was the foundation of his system—and that it contained a thousand such *betises*.

Gentlemen, I have now gone over the whole of these issues, excepting *the last*, which you will find at page 6th, in the following words: “ With grief I have perceived that many of the young men who go from this country to Edinburgh, to pursue their medical studies, come back with *their religious principles perverted, and their reverence for holy things sneered away*. It would be very unjust to accuse any individual of this weighty charge; *but the fact is undeniable*. I rejoice, therefore, whenever it is in my power, even in the most trivial degree, to shew, that the lights of the famous Northern Sect are not infallible;—that under affected knowledge, gross ignorance may lurk;—and that considerable intolerance may sometimes be the characteristic feature of philosophic liberality. I rejoice, also, but much more sincerely, to learn that a better spirit is arising in your famous University; and, in spite of its levity, its humours, its follies, nay, even its transgressions, I think your Magazine has been instrumental in this good work.”

To judge of this correctly, I beg you will look to the first and third issues; and you will observe, what is very material, that the libellous matter quoted in the third and fourth issues are *the same article in direct sequence*, without interruption; the words at the bottom of the first paragraph immediately precede those at the commencement of the next in the libel itself. There is no break—there is no interruption, or intervention of other matter, and there is no individual alluded to but the pursuer. The first, the third, and this last issues, are all founded on the single fact of the remark made by Mr. Leslie on the Hebrew language, which we have already considered. For that single re-

mark, the pursuer, Mr. Leslie, is accused of attacking the language of the Scriptures, merely because it is so. In the third issue, the libeller says, "In a work of his, treating on arithmetic, that "celebrated" man (another sneer at the pursuer) thought proper to *revile*, in a most dogmatic and insulting way, the Hebrew language. I asserted that he did not know even a letter of the tongue he had the impudence to pretend to criticise, *and I proved my assertion*. I leave the decision of the question to any Hebraist, to any man of common sense in the land. I *proved* that he was *actuated by hostility* to the *language of Revelation*, *simply because it was so*, and I defy any one to refute me." The charges of *dishonesty* are then interspersed throughout this issue; and then comes the conclusion, in these terms: "A man who would go out of his path, on an inquiry on the nature of heat, to *recommend an impious work*; and, in a Treatise on Arithmetic, to cast an ignorant sarcasm on the *language of the Bible*, or to *sneer at the fancies of one of the Apostles*, must ever be an *object of suspicion to those who hold the Scriptures in honour, and impiety in detestation*. We have no assurance that he may not digress as culpably hereafter, and if he does so, it is only fair to give him warning that I shall take care to point it out."

Gentlemen, these charges are FALSE, *every one of them*; and, with regard to the one which I have not spoken to yet, "to sneer at the fancies of one of the *Apostles*," it is not the fact—*there is no such thing in the book*. I refer you to the only passage which can possibly be alluded to, which you will find in page 229: "But it would be endless to recount all the visions of the Pythagorean school; nor should we stop to notice such fancies; if, by a perpetual descent, the dreams of ancient philosophers had not, in the actual state of society, still tinctured our language, and mingled themselves with the various institutions of civil life. The mystical properties of numbers, originally nursed in the sombre imaginations of the Egyptians, were eagerly embraced by the Jewish cabalistical writers, and afterwards implicitly adopted by the Fathers of the Christian church. But those fancies maintained an ascendancy in public belief until a very late period; nor were the reformers themselves exempt from their influence."

The words here used are the "*Dreams of ancient philosophers*;" and the "*Fancies*" Mr. Leslie speaks of, are

those of the Pythagorean school, which were embraced by the Jewish cabalistical writers, and afterwards adopted by some of the *Fathers* of the Christian church; *not of the apostles; of St. John*; and so forth; there is no mention made in the passage of "*an apostle*;" the expression is, "*The Fathers* of the Christian church." And you know that we only acknowledge the *Fathers* of the church, on account of their reputation and authority as learned men, and as explaining difficult or obscure passages, in the doctrines and in the moral precepts of the Scriptures. There is no *sacredness* of character in the case, and there is no doubt that their opinions, like those of other men, were affected and tinctured by the doctrines of the philosophers of the previous ages.

There is in this passage an allusion to the number of the beast, the number 666. But it is merely an *arithmetical* allusion. Mr. Leslie says: "Luther, whose vigorous mind was yet deeply tinctured with the credulity of his age, was accustomed to venerate certain numbers with a species of idolatry. Peter Bungus, canon of Bergamot, published, in 1585, a thick quarto, *De mysticis numerorum significationibus*, chiefly with a view to explain some passages in the Old and New Testament. The famous number of the beast, 666, which has so often tortured the ingenuity of the *expounders* of the Apocalypse, is regarded by some divines as of Egyptian descent, the archetype of the three monads, and combining the genial and siderial powers; being indeed only the sum of all the terms of the magic square of 6, the first of the perfect numbers, and dedicated to the sun. But we still see the predilection for Luther's favourite number, *seven*, strongly marked in the customary term of apprenticeships, in the period required for obtaining academical degrees, and in the legal age of majority."

Is there any thing here to justify the assertion that Mr. Leslie *sneered at the Fancies of the Apostles*? The charge is false, and most injurious to the pursuer. And now, Gentlemen, see what this libeller says in this last issue, which is a direct continuation of the preceding. "With grief I have perceived, that many of the young men who go from this country to Edinburgh to pursue their medical studies, come back with their religious principles perverted, and *their reverence for holy things sneered away*; it would be very unjust to accuse any *individual* of this weighty charge; *but the fact is undeniable*." Gentlemen, these

words are continuous; they succeed each other without interruption. There is no justification attempted of this issue; they only say it does not apply to the pursuer, Mr. Leslie. Do they expect to convince you twelve gentlemen that it was not meant to apply to the pursuer? If they do, I hope they will be mistaken. Their plea for Mr. Blackwood is substantially this,—He says, You, Mr. Leslie, have a pique at the language of the Bible, and you attack it merely because it is the language of Scripture: You are a member of an infidel sect: You are an *enfant perdu*, the most desperate of all desperate defenders of an impious system: You are actuated by a spirit of hostility to our holy religion: You go out of your path to recommend an impious book: You sneer at the fancies of the apostles: You cast an ignorant sarcasm on the language of the Bible, merely because it is so: You are *an object of suspicion to those who hold the Scriptures in honour, and impiety in detestation*: You are *a professor in the University of Edinburgh*: And, “*With grief I have perceived that many of the young men, &c. come back with their religious principles perverted, and their reverence for holy things sneered away.*” But don’t think I mean you, Mr. Leslie.—Oh no, far be it from me to impute such things to you!

Nothing more is wanted to point out clearly the meanness and the malice of this attempt on the part of this libeller. No affected disguise of this kind can conceal the real scope and meaning of the statement, taken in all its bearings and connection. The defender himself has furnished a plain instance of the manner in which such words are to be construed. Be pleased to look at the third Issue; the pursuer is there called a “*doubly honest Professor*.” Now see how they translate this word “honest” in their second counter Issue, which is in these terms: “Whether the pursuer, with the booksellers, in holding out to the public the book first aforesaid, as a second edition enlarged and improved, was guilty of a *dishonest* attempt to impose upon the public.” Every body understands the meaning of these words. The words “*doubly honest*” applied to the pursuer, means “*doubly dishonest*.” We all know it is quite possible to describe a man who is a *thief* by calling him an “*honest man*,”—to describe a *liar*, as being a “*lover of truth*.” All this is quite common. The meaning of words depends entirely upon their connection, and the way in which they are used; and you must say, on

your oaths, as jurymen, and men of common sense, whether you can doubt that the writer of these words meant and intended them to apply to Mr. Leslie.

The words of the libel are: "With grief I have perceived, that many of the young men who go from this country to Edinburgh to pursue their medical studies."—Reference is here made to the young gentlemen studying *medicine*, and the defender says, this does not allude to Mr. Leslie, who is not a Professor of medicine. But, observe, that the author pretends to write from a distance—from Ireland. It is well known that by far the greater number of the young gentlemen who come from Ireland to this country, come for the purpose of studying medicine, and it is known that the Natural Philosophy Class, of which the pursuer now fills the chair, includes Chemistry and other branches of material importance to the medical student, and that many of the students of medicine do attend the Natural Philosophy Class. There is no possibility of denying this, and when this libeller speaks of the medical students, he simply refers to the great body of the students who attend this University from a distance.

I would ask Mr. Blackwood, who now stands here as the author of this article, who else was meant by him, if it was not the pursuer. He must know who it is he means, for he says he will watch him to see that he does not digress again. Will he say that it was Dr. Gregory, Dr. Hamilton, Dr. Duncan, or Dr. Hope; or any of the Professors in that department. No, no, he won't pretend any such thing; he has alluded to nobody else. But how will his sentence read; even taking it as not referring *exclusively* to Mr. Leslie? It would be very unjust to accuse any *individual* of this weighty charge—(it is material to observe, Gentlemen, that this word "individual" is in italics in the libel,)—but *the fact is undeniable*, that the religious principles of the medical students are perverted, and their reverence for holy things is sneered away; but I do not allude to *one* individual; not to you, Mr. Leslie, solely; but you are one of the Professors of this University by whom the principles of the students *are perverted*, and their reverence for holy things *is sneered away*; and you, Mr. JOHN LESLIE, sneer at the fancies and dreams of the apostles of our holy religion, and you attack the language of the Bible, merely because

it is the language of religion,—and therefore you must bear your share of this weighty charge.

But there is more than this. This libeller goes on thus,—“ I rejoice, *therefore*, whenever it is in my power, even in the most trivial degree, to shew that the lights of the famous Northern Sect are not infallible—that under affected knowledge, gross ignorance may lurk—and that considerable intolerance may sometimes be the characteristic feature of philosophic liberality.” And then he says, “ I rejoice also, but much more sincerely, to learn, that a better spirit is arising in your famous University,” to which, he says, “ Blackwood’s Magazine” has greatly contributed.

Thus, you see, after a general averment, that the religious principles of the youth are perverted, and their reverence for holy things is sneered away,—he takes credit to himself for pointing out Mr. Leslie’s errors, and Mr. Leslie’s hostility to religion, as an effort calculated to repress or lessen the mischief,—and he draws the conclusion from this to which I have just been speaking. I do not know what defence, on this point, he may attempt. But if any attempt be made to *deny* that the passage had truly a reference to Mr. Leslie, such a denial will only serve at once to fix the character of the libel as of such a nature, that the party, from conscious wrong, dare not avow what to all the world must appear to be its plain and obvious meaning; and to stamp it as equally distinguished by its meanness, as it already is by the malice from which it too plainly proceeded.

I deny that what this libeller here asserts to be a certain fact has any truth in it; I deny that the youth who attend our University have their religious principles perverted, and their reverence for holy things sneered away by its learned Professors. That never was the character of the University, or of the people of this country, and I hope it never will be so. I deny that its Professors are grossly ignorant and intolerant, and I trust they never will become so. And, if any such impressions have gone forth, and been generally believed, of the Professors of our University, I do assert, that it is to Mr. Blackwood, and such libellers as him, that this is to be ascribed.

If I believed that any such evil existed, I can assure you that I should be the last person to create any bar or interruption to the just exposure of it, in a proper place or manner. I deny that it exists. But, even if it did, it is not

by such libels as this that it is to be put down or removed. Is it to be imagined that the religion of *peace* and *charity* is to be established and sustained by a system of *malignant calumny*? No, no. The character of these libels is too plain to be disguised under such hypocritical artifices as this. And if any thing could aggravate the evident personal malice of the writer, it is the attempt to cover it by the *pretence* of zeal for religion and for the safety of the principles of the youth.

Gentlemen, the interests of Mr. Leslie, and of the University of this city, are deeply involved in such statements. If the guardians of families place any value on the *souls* of their children or pupils, and if they give any credit to the false assertions of the defender, they will not allow them to come to this seminary if such charges as these are suffered to pass unnoticed.

One word as to damages, and I have done. The pursuer demands damages from you, for false, continued, unjust, and malignant calumnies. It is common to say, that a pursuer in the station and rank in life which Mr. Leslie holds, does not seek damages in order to enrich himself at the expense of the defender. No, Gentlemen, neither does Mr. Leslie; but my client does ask, at your hands, that, by the amount of the damages you may award him by your verdict, you shall mark to the public the sense you entertain of the calumnies that have been directed against him; and the value you attach to his character as an instructor of youth, and a man of honour and principle. And by your verdict he trusts you will convince Mr. Blackwood, and those who have abetted him in his career of calumny, that if they will take up that trade, which Cicero so aptly describes as "*Calumniæ quæstus turpissimus*," they must take it with the burden of giving *full* reparation of the injuries inflicted on individuals. And that, in thus doing justice to the pursuer, you will do what in you lies to put down that system of detraction, of which we have lately seen so much; and which has been justly described by a learned judge of this Court, (Lord Pitmilley,) as being of such a nature as, come from whom it may, and from whatever side or party, must always be deplored by all sober-minded men.

MR. JEFFREY.—We now put in evidence the documents which have been admitted by the parties, namely, the num-

bers of the Magazine, being the thirty-fifth and forty-fourth, and the first and second editions of Mr. Leslie's book on the Philosophy of Arithmetic. We also put in Bishop Beveridge's Chronological Institute, and the two Hebrew Grammars of Dr. Wilson and Mr. Joseph Frey. Next, we put in the defences for Mr. Blackwood in this process.

LORD CHIEF COMMISSIONER.—If there are any particular passages in these works, Mr. Jeffrey, which you wish read, let it now be done. If the other party, in like manner, wish to have any part of them read, this is the time for doing so.

Mr. JEFFREY.—I shall only trouble your Lordship and the Jury with reading a passage or two from Mr. Blackwood's Defences. I particularly refer to the passage towards the bottom of the fourth page, in which the defender says, "The good taste and propriety of the language in the passages referred to, the defender is not bound to maintain or defend in a court of law, but he distinctly asserts, that all the remarks in which the epithets and phrases contained in the summons occur, are completely within the bounds of fair and free discussion, and are supported by such facts and circumstances, and by such extracts from the pursuer's publications, as completely to exclude the charge of unwarrantable and unprovoked attack."

I read likewise the passage at the top of page 5th, where it is stated, "If the publications of the learned pursuer all afford such foundation for the charges of which he complains, as to exclude the pretence of malice, and to bring these remarks within the pale of free criticism and discussion, then there is no calumny, and there is no ground of action."

I read, likewise, the concluding part of the defence, where it is stated, "The alleged ignorance even of the alphabet of the Hebrew language, which the learned pursuer, in a scientific work, *went out of his way* to describe as 'the rudest and poorest of all written languages,' is not denied in the summons, and cannot be disputed. Is there any ground of action for alluding to such an instance of ignorance; or is the remaining part of the above passage actionable; or is it not the exposure of literary *imposition* and *unworthy trick*, by which the public is protected, and

which it is one of the legitimate duties of true criticism to make."

The pursuer then called the following witnesses in support of his case:

EVIDENCE FOR THE PURSUER.

Rev. DAVID DICKSON, one of the Ministers of St. Cuthbert's, *sworn*.

Mr. JEFFREY.—Mr. Dickson, you are one of the Ministers of St. Cuthbert's?

A. I am.

Q. Have you attended to the study of the Hebrew language?

A. I have, somewhat.

Q. You look upon yourself as having acquired a competent knowledge of that language?

A. I do, in many particulars.

Mr. JEFFREY.—The information I want does not go deeply into the subject, it only refers to the Alphabet.

Q. Mr. Dickson, were you a candidate for the Hebrew Chair on occasion of the late vacancy?

A. I was.

Q. Has the Hebrew language, in the opinion of the learned, always had one character?

A. It has not.

Q. What is the original character?

A. The received opinion is, that what is called the Samaritan, or old Phenician character, is that in which the Scriptures were originally written.

Q. Were they one or two characters?

A. Two characters.

Q. How many letters or characters does the Samaritan alphabet contain?

A. Twenty-two.

Q. Is that its whole complement?

A. The whole.

Q. Does it contain no additional characters, or finals, as they are termed?

A. None, so far as I have observed.

Q. Are you acquainted with a chronological work by Bishop Beveridge?

A. I am perfectly acquainted with it as a book of authority, and since this question was agitated, I have looked into it, and have derived considerable information from it.

Q. Were you aware that the Hebrews used the letters of that alphabet to express numbers?

A. I cannot say that I am.

Q. In the body of the Scriptures I understand the numbers are always given in words?

A. They are always given in words.

Q. Look at the bottom of that page. What numbers are these?

(Bishop Beveridge's book was here handed to the witness.)

A. They are Samaritan characters, showing how they marked numbers.

Q. If the letters of the alphabet be used for the expression of numbers, the *ancient* Hebrew alphabet would not, I presume, go farther than 400?

A. It is impossible that it could do so.

Q. Explain the characters used by the Samaritans, as given in Bishop Beveridge's book, at page 212, and be so good, in the first place, as to explain the meaning of the Latin quotation at the bottom of the page?

A. "According to the Samaritan, or ancient Hebrew alphabet, as having no final letters, all the numbers are constantly expressed in this manner."

Q. Be so good as explain how these are expressed?

A. Up to nine, the letters are used as units, the next nine are the tens; then there are four remaining, the first eighteen being exhausted by the two series I have mentioned. Of the four letters remaining, the first is used as 100, the second for 200, the third for 300, and the fourth for 400; and thus there were no additional letters to express 500, without some farther complication of signs, and therefore the mode adopted was by taking the letter denoting 400, and the letter expressing 100, to make up 500—for example, I shall take the Chaldaic characters. The letter Koph signifies 100; the letter Resh, signifies 200; the letter Schin, 300; the letter Tau 400. The mode of expressing 500 by the ancient characters, was thus: $\text{Tau} = 400 + \text{Koph} = 100 = 500$, and so on.

א 1	מ 10	פ 100
ב 2	נ 20	צ 200
ג 3	ז 30	ק 300
ד 4	ח 40	ל 400
ה 5	ט 50	פא 500
ו 6	י 60	צא 600
ז 7	כ 70	קא 700
ח 8	ל 80	&c. &c.
ט 9	מ 90	

Q. Have you seen the note in Mr. Leslie's work on the Philosophy of Arithmetic, which is referred to in this case?

A. Yes, I have.

Q. Is that the same with what you saw?

A. Precisely the same.

Q. You have already mentioned in this case, that the ancient Hebrew was written in what is called the Samaritan character—in modern times—in our own times, what is it named?

A. The Chaldaic.

Q. When were the Chaldaic characters introduced?

A. It is generally understood, immediately subsequent to the Babylonish captivity.

Q. How many letters has the Chaldaic alphabet: I mean letters expressing sounds?

A. Twenty-two.

Q. Some are written in a double form, I mean such as with us are used in the middle and end of a word?

A. They are.

Q. How many of these are there in the Chaldaic alphabet?

A. Five; and these are used for the ending of the words.

Q. Therefore the Chaldaic, or modern Hebrew alphabet, contains twenty-two letters as to sound, and twenty-seven as to character?

A. Yes.

Q. And you think these five final letters were introduced into the alphabet after the Babylonish captivity?

A. Yes.

Q. Has it been a subject of dispute among the learned,

whether this change upon the Hebrew alphabet took place before, or after the Christian era?

A. I am not aware that there has been any great difference of opinion on the subject. If there is any difference, perhaps it does not exceed 100 years.

Q. Is it a matter of received opinion, that these five forms of final letters were always used, or is it supposed that they were added at a later period?

A. They are supposed to have been added at a later period.

Q. Is it settled when, or about what period, they were so added?

A. It is uncertain when, but the received opinion is, that it was subsequent to the introduction of the Chaldaic character.

Q. Are there many eminent Hebrew scholars that maintain the opinion that the final letters were not introduced at the time of the translation of the Septuagint into Greek?

A. Yes, among others Dr. Kennicot. Dr. Kennicot, however, does not refer to the Septuagint translation in general. But he says that if the Septuagint translation of the prophecy of Jeremiah was executed, as it is believed to have been, about 140 years A. C. the final letters were certainly not used in the MSS. from which that translation was made. In regard to Jeremiah, Kennicot refers to his Dissertation on the Sacred Text, which I have not been able to procure. I have, however, compared the Hebrew of a passage in Zechariah to which he also refers, with the Septuagint, from which it is perfectly evident, that the final letters were not used in it*.

Q. Therefore Doctor Kennicot was of opinion, that these final letters were not in general use 140 years before Christ?

A. Yes.

LORD GILLIES.—Ask the witness his opinion of Bishop Kennicot.

Q. Are you of opinion that Bishop Kennicot is right in the opinion he gives on this matter; do you concur with him?

A. I do: and he states distinctly, that in the most ancient MSS. which he compared and collated, there were not any final letters existing.

* The passage referred to is Zechariah xi. 11.

THE LORD CHIEF COMMISSIONER.—You have stated that the final letters in the Chaldaic characters, by which I understand you to mean, letters used in the end of words, in a similar way to our small *s*, were introduced somewhat earlier than the period of the Christian era. Be so good, Sir, as state that over again. How much earlier was it?

A. Somewhere about 200 years before the Christian era.

MR. JEFFREY.—Mr. Dickson, you have seen that note of Mr. Leslie's about the Hebrew mode of notation?

A. Yes, I have.

Q. Now, I ask you; does it, in your opinion, indicate an entire ignorance of the Hebrew alphabet?

A. Unquestionably not,—of the mode of numeration by letters.

Q. Then you consider, that that remark of Mr. Leslie's does not state any thing different from the fact?

A. Certainly not.

Q. Now Sir, look at the context—would you understand, taking the scope of the whole passage into view, that Mr. Leslie there meant the *ancient*, or the modern Hebrew?

A. Unquestionably the ancient. He says the "*Hebrews*," not the modern Jews.

Cross-examined by Mr. FORSYTH.

Q. You have said, Sir, that you are acquainted with the Hebrew language. You have said that it was expressed in different characters—the ancient Samaritan, and the Chaldaic, and that these two are different from each other?

A. That is the received opinion.

Q. What books are considered as existing in the ancient Samaritan character?

A. The Pentateuch, or the five books of Moses.

Q. Have you seen any other?

A. I have not seen them, but I have seen extracts in the Samaritan character.

Q. But you have seen no books in it?

A. I have seen none.

Q. In what character are the Scriptures written which have come down to us?

A. The Chaldaic, or what is called the Hebrew.

Q. What do the General Assembly mean by the Hebrew language, when they order students to be instructed in it :—Do they mean the Chaldaic or the ancient Samaritan ?

A. They mean the Chaldaic character certainly, not the Samaritan.

Q. Now Sir, this Hebrew, or what we call the Hebrew or the Chaldaic language, that is the character, is it not, in which all the books in the Old Testament are written ?

A. Not exactly, there are some parts in Ezra and Daniel written in the Chaldaic language.

Q. Then, with the exception of those which you have now mentioned, Ezra and Daniel, the whole of the Scriptures are written in what is now called the Hebrew, both New and Old ?

A. Yes.

Q. Do you know the character of the modern Hebrew ?

A. I do, but not their mode of numeration.

Q. But you know the modern Hebrew ?

A. Yes.

Q. Now, in speaking of the modern Hebrew, you have said, that the time when it was introduced was somewhere about the time of the Babylonish captivity, or immediately subsequent to it ?

A. Yes.

Q. How long did that captivity last ?

A. Seventy years.

Q. When did it terminate ?

A. Above 400 years before the Christian era.

Q. In what we call the Hebrew language *now*, what is the mode of notation in use by the twenty-two letters which we find in the 119th Psalm ; and in regard to the five final letters, what is the mode of notation used in the Hebrew character ?

A. Exactly the same as in the Samaritan, as to the twenty-two first letters, which go to 400 ; and then, there is final Caph, denoting 500 ; Mem, denoting 600 ; Nun, denoting 700 ; Pe, denoting 800 ; Tsadde, 900.

Q. Then you understand that in the present Hebrew language, as enjoined to be taught in our Universities by the General Assembly of the Church of Scotland, one letter expresses numbers to the end of the alphabet ?

A. Yes.

Q. Now, Sir, turn up the table of numeration in Bishop

Beveridge's book ; in what language are the numerals there given ?

A. Arabic, Syriac, Greek, Samaritan, Hebrew, Roman, Indian, Chinese, Ethiopic.

Q. And all these are different from each other ?

A. Yes.

Q. How many letters were there in the Greek ? Were there not twenty-four, which, with the addition of three other characters, made twenty-seven ; making a complete series of units, tens, and hundreds ? And were not some of these characters borrowed from the Hebrew ?

A. I have no doubt they were.

Q. What were these ; is Koph one of them ?

A. Perhaps ; but I won't commit myself, unless I particularly examine them.

Q. Then it is your opinion, that the Samaritans used the same mode of expressing numbers by letters, that the Hebrews did ?

A. The same.

Q. Now, Sir, attend to this note which I shall read to you : " The oriental nations appear generally to have represented the numbers as far as 1000, by dividing the alphabet into three distinct classes. But the Hebrew, the rudest and poorest of all written languages, having only twenty-two letters, could advance no farther than 400, and to exhibit 500, 600, 700, 800, and 900, it had recourse to the clumsy expedient of addition, by joining 400 and 100, 400 and 200, 400 and 300, 400 and 400, and 400 with 400 and 100." Is that true, according to your understanding of the subject ?

A. That requires explanation. It is true as to the mode of notation among the Hebrews, before the Babylonish captivity. It is not so as to the mode of notation in use, since that period, among the modern Jews.

Q. In short, it is true of the *Samaritan*, or old Hebrew character ; but it is not true as to the Hebrew language now in use ?

A. It is true as to the language of the Old Testament. There is no example of modern notation at all in it. The numbers are always expressed by words at length.

Q. There is a remark in Beveridge's book upon this subject. Is that remark written in the Hebrew character ?

A. It is.

Q. And in that character do the Hebrews mark the numbers?

A. Not in the Old Testament.

Q. I ask you, do the Hebrews mark in that character *now*? Is that the correct mode of marking the numbers now in use among the Hebrews?

A. It is, as it was understood at the time Bishop Beveridge wrote. I may mention that, on Saturday night last, I looked into the oldest Hebrew Grammar published by a Protestant, Reuchlin, which was edited by Sebastian Munster; who says, that he supplied from Elias Levita, a celebrated Jewish grammarian, the defects which he found in Reuchlin's Grammar; and it is somewhat curious, that I found that though he gives the forms of the five final letters, yet, after giving the respective numeral powers to the twenty-two letters, he takes no notice of any numeral power of the final letters; but, on the contrary, adds what I shall translate, as the work is written in Latin,—"But as the letters of the alphabet do not extend beyond 400, it will be necessary to express the numbers above 400 by two letters, and sometimes by *three*, &c."

Q. Did you look at any of the later grammars, or are you aware that there were any authors who believed that the five final letters were of an earlier origin?

A. O yes. Buxtorf, I believe, thinks they were as old as Adam; or, at least, as old as any books in existence, or that ever were written.

Q. Do you know Noble?

A. I do perfectly.

Q. Now, Sir, I ask you, from the accurate and intimate knowledge you appear to possess of the Hebrew language, do you consider the Hebrew as the rudest and poorest of all written languages?

A. Certainly not, Sir.

Q. Has it great power of expression?

A. Yes, and it is extremely simple; and is in some respects one of the most philosophical languages in existence.

Mr. JEFFREY.—I am not exactly aware of what you stated as to the ancient Protestant Hebrew Grammar; was it to this effect that it gave a numeral power to the twenty-two letters, but none to the final letters?

A. Yes, and that the Grammar gives this statement, that as the alphabetical letters of the Hebrews do not extend to numbers beyond 400, it became necessary to make up

the remaining numbers by two letters, and sometimes by three letters, *viz.* to make up 900.

Q. Is Frey's Grammar a book of much celebrity?

A. Very much so.

Q. Look at the numerals which you will find on the fifth page. How are they described?

A. The numerals are given in the following manner: 500 is expressed thus, תק (*Tau, Koph*) or ך (*final Caph,*) that is, 400 + 100, or 500.

Q. This is one of the most recent Grammars which makes mention of that mode of Hebrew notation?

A. Yes.

Q. In the Old Scriptures, written in the Samaritan character, there are no numbers denoted by letters, but all the numbers are given in words?

A. Yes.

Q. In the Church of Scotland, the Hebrew in the Chaldaic character is the only Hebrew understood and referred to as necessary to be acquired by the students of divinity?

A. It is.

Q. Is it the only orthodox character of the language of Scripture, or is it not?

A. It is not.

Q. You have been asked, Sir, whether the Hebrew is, in your opinion, the rudest and poorest of all written languages, and you have said that it is not. Now, look at the passage again, and say whether in your opinion Professor Leslie's remark refers to the general character of the language, or to the mode of notation only?

A. That is not a question for me to answer.

CHIEF COMMISSIONER.—That question is more fit for the consideration of the Jury.

BY A JURYMEN.—In answering the question put to you as to the note of Mr. Leslie, indicating knowledge or ignorance of the Hebrew language, what did you say?

A. I said, that, as to notation, it did not indicate ignorance: I cannot say as to his knowledge or ignorance of the language: He himself says, it is the rudest and poorest of all written languages.

LORD GILLIES.—Does the note itself indicate ignorance of the language?

A. I would say it does; because he says that the Hebrew is the rudest and poorest of all written languages,

but still he might not be ignorant of the language, and yet think it to be so.

Rev. Dr. DAVID SCOTT, Minister of Corstorphin, sworn.

Mr. JEFFREY.—Dr. Scott, you are the Minister of the Parish of Corstorphin?

A. I am.

Q. You have spent a considerable portion of your time in the study of the Oriental languages, and particularly of the Hebrew?

A. I have.

Q. You look upon yourself, of course, to be particularly well acquainted with the Hebrew?

A. I do.

Q. Is it understood among the learned to have been at all times written in one, or in different characters?

A. It is the generally received opinion, that at the time while it was a spoken language, its character was that of the Samaritan; but that Ezra substituted the Chaldean character in the room of the Samaritan; and the Chaldean character is now that which is found in all Bibles.

Q. Did this happen subsequent to the return of the Jews from the Babylonish captivity?

A. The majority of the learned think so; but a very respectable minority are of opinion, that this happened in the second century of the Christian era.

Q. Is Whiston of that opinion?

A. Yes; Whiston, Buxtorf, a great name in Hebrew literature, and others, think that this did not happen till the second century after Christ. The late Dr. Doig of Stirling also inclined to that opinion*.

Q. What number of characters has the Samaritan?

A. Twenty-two.

Q. Has it no final characters?

A. It has none.

Q. Was the Hebrew alphabet divided into a series of letters, and can it go farther than 400?

A. It can go no farther.

Q. Be so good as explain the cause of this.

A. The first nine letters are termed *units*; the second nine are termed *tens*; the rest are termed *hundreds*: when

* See article Philology.—Encyclop. Britan.

the numbers amount to more than 400; they are joined together, thus, as $400 + 100 = 500$, and so on.

Q. Have you read the note in Mr. Leslie's book on Arithmetic, which is partly the ground of this action?

A. I have, (the witness was here shewn the book.)

Q. Does that representation of the mode of expressing the Hebrew numerals strike you as being truly the mode of notation by the ancient Samaritan character?

A. Yes, it does.

Q. You are acquainted with Bishop Beveridge's work?

A. I am.

Q. Look at that copy of Bishop Beveridge's work, page 212, where you will see a table of numeration by Hebrew characters, (here the book was shewn to the witness.) Is that the method of notation you have explained to us?

A. Precisely so.

Q. And is this done by the use of two characters after 400?

A. Precisely.

Q. You have said that the Chaldaic character was introduced at the return from the Babylonish captivity, according to the general opinion; or about 200 years after the Christian era, according to others. What number of letters is there in the Chaldaic language?

A. Twenty-two.

Q. Have they any more letters expressing character, but not different in sound?

A. Five. There are twenty-two characters expressive of sound, and there are twenty-seven expressive of numbers*.

Q. Is it known whether the final letters are parts of the original character of the Hebrew language, or were they added afterwards?

A. I have been told that they were introduced some time afterwards, but I have been able to find no authority for saying so. They were introduced, it would seem, by the transcribers of manuscripts, partly on account of their beauty and variety.

* In one Hebrew manuscript, as old as the middle of the 12th century, final letters are used to denote numbers. See Kennicott's General Dissert. Heb. Bib. page 94. In others the final letters have just the same power as the initial, or medial, answering to them. If, for instance, the initial or medial M, express 40, the final M will just express 40, page 73. Or if initial and medial K express 20, final K will do the same, page 74.

Q. Looking at that note of Mr. Leslie's; does it appear to you to contain intrinsic evidence that the writer was ignorant of the Hebrew mode of notation.

A. It seems to indicate a correct knowledge of the mode of notation used in the ancient Hebrew, or the Samaritan character.

Q. Then there is nothing in the note to indicate the writer's ignorance of the Hebrew language, or of the alphabet?

A. I think none.

Cross examined by Mr. FORSYTH.

Q. In the rules of the General Assembly, prescribing the studies of the young men destined for the Church, and referring to the Hebrew of the Bible, and of the Psalms, do they understand the Chaldaic, or the Samaritan character?

A. The Chaldaic.

Q. Therefore the students of divinity are trained in the Chaldaic or modern Hebrew?

A. They are.

Q. Is the Hebrew Grammar of the Assembly a Samaritan Grammar.

A. It is Chaldaic, or, what is commonly called Hebrew, though, properly speaking, it is Chaldaic.

Q. Now, in the Hebrew, or what is called so by us, is it necessary to express the numbers by double letters?

A. They can express numbers by the twenty-two single letters to 400; and the five letters of *double* form, carry the numbers up to 1000.

Q. Do you know any other way they have of expressing numbers by letters?

A. Sometimes it is done in the same way as by the ancient Samaritan character. In editions of the Hebrew Bible, at the end of books, such as Genesis, the Hebrew critics sometimes give the number of all the verses, words, or letters, in that manner*.

Q. Was it necessary to do so? Could they do the same thing otherwise?

A. It was not necessary, but they might do it if they chose.

Q. It is said in this note of Mr. Leslie's, which I pre-

* For some examples of the mode of notation by letters among the ancient Hebrews, the learned reader may consult Vander Hooght's edition of the Hebrew Bible, 1705.

sume you have seen, and which you will now look at, that the Hebrew is "the rudest and poorest of all written languages." I ask you, what is your opinion of that remark?

A. In this case, I would not object to the word rude as applied to Hebrew, if the meaning was, that it was the language of a rude people or an early age. As to the poverty of the language, we are not entitled to judge, till a clear and accurate examination be made of Hebrew, and all its dialects, which has never yet been done.

Q. Do you think that the Hebrew is the rudest and poorest of all languages?

A. No: I am not of that opinion.

CHIEF COMMISSIONER.—I understand you to say that the Hebrew alphabet has a power of numeration to the extent of 1000, by means of the final letters;—these final letters, I understand, are different from the form of the other letters, similar to the way in which the capitals A, B, C, &c. differ from the common Roman letters, little a, little b, little c, and so forth; now, have these final letters any sound peculiar to themselves, different from the initial or medial ones, having the same name; or are they used as numerals only in conjunction with the other letters?

A. They have no sound different from the letters of the same name, though they have a numerical power different from these letters.

MR. JEFFREY.—We now proceed to lead evidence on that part of the case which charges the pursuer, Mr. Leslie, with being a plagiarist.

With this view I now lodge Mr. Leslie's Treatise on Heat; the Volume of Philosophical Transactions of the Royal Society of London, 1777, containing Mr. Nairne's Paper; the sixth volume of the Encyclopædia Britannica, referring to page 607; the eighth volume of the Memoirs of the Institute, referring to page 71. The Philosophical Transactions of the Royal Society of London in 1813, from which I shall read over one passage on page 72.—
"As a means of avoiding the necessity of so large a vacuum, Mr. Leslie had recourse to the ingenious expedient of employing an extensive surface of sulphuric acid, for the purpose of absorbing the vapour generated in the course of the experiment, and by that means continued to freeze much larger quantities of water than could otherwise have been done, and by a far less laborious process.

“ But even in this method the labour is not inconsiderable, and the apparatus, though admirably adapted to the purpose for which it is designed, is large and costly.”

I also put in Memoirs of the Institute for 1811, referring to pages 79 and 80, 1st article, in which the writer says, “ Mr. Leslie, member of the Royal Society of London, has contrived to augment still farther the effect of the abstraction of air, by placing under the receiver of the pneumatic machine, bodies very attractive of moisture, which, by absorbing the vapour as fast as it is formed, multiplying indefinitely its production ; and he has succeeded in this way, in producing a refrigeration so rapid and violent, that the water is frozen in a few minutes, at any season of the year. It is a mode of obtaining, at pleasure, ice without any other expense than the fire necessary to dry again the absorbent substance which had been employed.”

DR. ALEXANDER MARCET, F.R.S. London, sworn.

Examined by Mr. JEFFREY.

Q. Dr. Marcet, you are a Fellow of the Royal Society of London?

A. I am.

Q. And you were for some years physician to Guy's Hospital?

A. Yes.

Q. You practised medicine in London, did you not?

A. For many years.

Q. And you have read lectures on chemistry for some time?

A. I have, for some years.

Q. You have attended to the progress of chemistry from time to time?

A. Yes.

Q. You have done so both at home and abroad?

A. I have. Lately, I have spent some part of my time abroad.

Q. Have you attended to the process of freezing water *in vacuo* discovered by Mr. Leslie?

A. Certainly.

Q. And you know it?

A. I have repeated it often.

Q. Did it appear to you at the time to be an original discovery?

A. It did then, and it does now, appear to me to be an original process.

Q. Are you acquainted with the details of the experiment made by Mr. Nairne, as described in the Philosophical Transactions in 1777?

A. I heard of Mr. Nairne's paper long since, but I read it only lately?

Q. Did you attend to this matter with a view to satisfy yourself of the justice of Mr. Leslie's claim to be considered as the original discoverer?

A. I did so, with a view to this question.

Q. Is it your opinion now, that Mr. Leslie is to be considered as having borrowed or stolen this discovery from Mr. Nairne's work; or do you still consider his discovery to be original?

A. I remain of the same opinion, though some of the *facts* on which the discovery rests were known long before: They were known to Dr. Cullen and Dr. Black, but the *process* itself is perfectly original.

Q. I understand you to say that the *facts* on which the experiment or discovery of Mr. Leslie is grounded, were known to chemists before; for instance, that sulphuric acid is an absorbent of moisture?

A. That was known long before Mr. Nairne's time.

Q. Was it also known that evaporation produces cold?

A. That also was known generally.

Q. Had any one, before Mr. Leslie did so, combined these two principles in the way he has done?

A. Certainly not; and it is on that combination that the claim to originality rests.

Q. I ask you, Sir, is this discovery of Mr. Leslie's analogous to other discoveries in the science of chemistry?

A. There is hardly any discovery of the least value that has been made in the science of chemistry, but from the known properties of bodies. It is by combining those properties, so as to produce certain effects, that a discovery in science is made. If the discovery were fortuitous, it could not be considered so meritorious.

Q. I ask you, is there in that paper of Mr. Nairne's, which you say you have lately studied, any experiment to show the production of cold, by the use of sulphuric acid?

A. Mr. Nairne has certainly shown that when sulphuric acid is placed within the receiver of the air-pump, a greater

dryness is produced ; but he has shown no production of cold by the evaporation of water. His experiment was not made with water, but with ether ; while the freezing of water by its own evaporation *in vacuo*, assisted by the presence of sulphuric acid within the same receiver, are points quite peculiar to Mr. Leslie's discovery.

Q. You have said that Mr. Nairne produced cold by the evaporation of ether, under the receiver of the air-pump, and that this process was known long before ;—now, I ask you, did Mr. Nairne employ sulphuric acid in his experiments with water ?

A. He did not. At least, if there was any sulphuric acid introduced in the experiment with water, he does not mention it.

Q. Now, Sir, I ask you, do you, after reading that paper of Mr. Nairne's, consider Mr. Leslie as a plagiarist ?

A. Certainly not.

Q. Dr. Marcet, you are a philosopher, and a chemist. Now, suppose you had read the details of Mr. Nairne's experiments, as given in the Transactions of the Philosophical Society, would you have considered him as a sure guide to that process which Mr. Leslie has traced in his discovery ?

A. Certainly not. Mr. Nairne's work was in the hands of the philosophic world long before Mr. Leslie's discovery, and many and much abler men than myself had read it, who yet had overlooked that discovery. The application of the facts formerly known, as made by Mr. Leslie, does not appear to have been at any time in Mr. Nairne's mind.

Q. With this general knowledge of the subject, do you yourself consider, and do you know, that the philosophic world in general, have considered Mr. Leslie's discovery as original ?

A. I have not heard a dissentient voice upon the subject, either in London or abroad, as far as my knowledge extends.

Q. Do you recollect at what time the knowledge of this experiment of Mr. Leslie was received in London ?

A. About the year 1811, I believe.

Q. Was it communicated in any written statement by Mr. Leslie ?

A. I believe it was, by letters from him.

Q. And was the experiment tried in London ?

A. It was repeatedly tried, and it failed ?

Q. Did you try it ?

A. I did, and I was unsuccessful.

Q. You knew the principles upon which Mr. Leslie proceeded in his experiment ?

A. I did generally ; but, in some particulars, my knowledge was defective, which caused the failure in my attempt to perform it.

Q. Was the information conveyed in the letters of Mr. Leslie much nearer to the actual process which you afterwards saw him successfully perform, and which you yourself afterwards successfully repeated, than the detail given in Mr. Nairne's book ?

A. Infinitely nearer. I placed the sulphuric acid under the receiver of the air-pump, together with the water, by which means the water was considerably cooled, though not sufficiently to freeze.

Q. When, and by whom, was the experiment first successfully performed in London ?

A. It was successfully performed in London by Mr. Leslie himself. We had a meeting in London, of some of the members of the Royal Society, and others, and Mr. Leslie exhibited the experiment before us successfully ; and it is now quite easily repeated. My belief is, that no one succeeded in this experiment in London, until Mr. Leslie himself showed the way, at least it did not come to my ears.

Q. Do you know Sir Humphry Davy ?

A. I do.

Q. Do you know that he tried the experiment and failed ?

A. I cannot positively say. I believe he tried it, when first mentioned, but without success.

Cross-examined by Mr. FORSYTH.

Q. Dr. Marcet, you have told us that the principles of this experiment of Mr. Leslie's were known to Mr. Nairne. Was it by combining the two principles of Nairne, and placing the sulphuric acid within the receiver of the air-pump, that the discovery was made ?

A. I shall speak first as to Mr. Nairne ; then as to Mr. Leslie. Mr. Nairne's first object was to ascertain why he could not produce a more perfect *vacuum*. He observed that vapour was given out from a small piece of wet leather, made use of in the air-pump, to make the receiver air-tight.

He found that his inability to produce a perfect vacuum arose from the vapour proceeding from this piece of wet leather. Of two gauges he employed, one acted better than the other. In investigating the cause of this, he was led to try the power of a variety of substances to produce vapour, such as water—spirit of wine—and sulphuric acid; and the manner of ascertaining the quantity of vapour produced, was by weighing these substances, both before and after the experiment. This was done to show the loss in weight these substances had respectively sustained by the evaporation. In the case of sulphuric acid, instead of a loss, Mr. Nairne found that the acid had gained two grains. He reflected upon this, and found that it was owing to the circumstance of the watery vapour of the receiver having been absorbed by the sulphuric acid, instead of any evaporation having taken place from it. Mr. Nairne did not go farther. He did not, like Mr. Leslie, think of *cooling*, much less of *freezing* water, by the help of sulphuric acid. In his experiment on ether, he produced a certain degree of cold, and he observed little particles of ice left in the receiver. He thought he had frozen ether, but the opinion of the philosophic world was, that he had only frozen a little water, which was accidentally mixed with it.

Q. You have said, Dr. Marcet, that it was well known before, that evaporation produced cold,—was it not a very natural idea that this evaporation by means of sulphuric acid, should produce ice to any extent, when he found ice produced by his experiment with the sulphuric acid?

A. No doubt a man of a powerful genius might have entertained such an idea, and might have arrived at Mr. Leslie's discovery. Mr. Leslie, by meditating on the result of Mr. Nairne's experiments, might have drawn from it the discovery he made; but if he had, he would have given a great proof, both of an inductive and an inventive genius.

Q. Then you mean to say that Mr. Leslie has done what none before him ever accomplished?

A. Certainly. He has done what the whole philosophic world, with all these facts before them, for more than sixty years, had not been able to accomplish. I certainly consider, therefore, that the honour of the discovery, if obtained in this way, was unquestionably much greater than if derived from mere accident.

DR. THOMAS THOMSON, Regius Professor of Chemistry in the University of Glasgow, sworn.

Examined by Mr. JEFFREY.

Q. Dr. Thomson, you are a professor of chemistry in the University of Glasgow?

A. Yes.

Q. And you are the author of a treatise on that science?

A. Yes.

Q. It has gone through more than one edition?

A. Yes.

Q. Are you acquainted with Mr. Leslie's experiment of the production of ice by means of sulphuric acid placed under the receiver of the air pump?

A. I have repeated it a hundred times.

Q. Did you do so soon after Mr. Leslie performed it?

A. It was very soon after.

Q. Do you consider that as an original discovery, or a discovery borrowed or stolen by Mr. Leslie from some philosophical work?

A. I believed it at the time to be an original experiment, and I think so now.

Q. Are you acquainted with Mr. Nairne's paper published in the Philosophical Transactions of the Royal Society?

A. I have read it.

Q. Have you done so with a view to this case?

A. I have, carefully.

Q. And your opinion remains the same as before?

A. Quite the same as it was before.

Q. And you know of nothing to impeach the originality of the discovery?

A. Nothing.

Q. Both the facts upon which the discovery is founded, I mean, that evaporation is productive of cold, and that sulphuric acid is an absorbent of moisture, were known before?

A. They were known long before, familiarly.

Q. Did Mr. Nairne's experiment fix any other principle?

A. None. Mr. Nairne's object was to explain the disagreement betwixt Mr. Smeaton's pear-gauge and the common barometrical gauge.

Q. Did any one combine these two facts before Mr. Leslie?

A. No one, so far as I know.

Q. Do you think Mr. Nairne did?

A. Most certainly he did not.

Q. Do you think that this, being only a combination of properties previously known, derogates from the merit of the discovery made by Mr. Leslie?

A. I do not. It is almost always the case with every discovery.

Q. Was there any water used along with the sulphuric acid by Mr. Nairne, in making his experiment?

A. None whatever, and the experiment itself was known before.

Q. In short, where sulphuric acid was used in Nairne's experiments no water was applied; and when water was used, no sulphuric acid was applied in the production of cold?

A. None.

Q. Was this experiment of Mr. Leslie's by combining sulphuric acid with water in the production of cold, considered by men of science as a brilliant discovery?

A. It was.

Q. Was it universally attributed to Mr. Leslie?

A. It was.

Q. And not to Mr. Nairne?

A. It was not.

A. Did you ever hear the originality of the discovery disputed?

A. I never heard it so much as doubted.

Q. Are you acquainted with Mr. Leslie's geometrical works?

A. I am.

Q. Are these works considered to be works of merit and originality?

A. They are.

Dr. HENRY DEWAR, Physician in Edinburgh, sworn.

Examined by Mr. JEFFREY.

Q. Dr. Dewar, you are a physician in Edinburgh?

A. I am.

Q. Have you made chemistry a particular subject of study?

A. I have.

Q. Have you delivered lectures on chemistry in this city ?

A. Yes.

Q. You are acquainted with Mr. Leslie's discovery of the evaporation and freezing of water by means of sulphuric acid ?

A. I am.

Q. When were you apprised of Mr. Leslie having made this discovery ?

A. As soon as it was circulated in conversation.

Q. And have you always considered it to be an original discovery ?

A. I have.

Q. You have seen Mr. Nairne's paper giving an account of his experiments with sulphuric acid and ether, published in the Philosophical Transactions a good many years ago ?

A. I have read that paper lately.

Q. And with a view to the merits of this cause ?

A. Yes.

Q. And did the reading of that paper alter the views you had previously entertained of Mr. Leslie's discovery ?

A. Not in the least.

Q. Mr. Leslie's experiment was founded on the known principles of the absorption of vapour by sulphuric acid, and the production of cold by evaporation ?

A. Yes ; under an exhausted receiver.

Q. Did any one, to your knowledge, so combine these two principles before ?

A. None.

Q. No one did so before Mr. Leslie ?

A. None before Mr. Leslie.

Q. Did Mr. Nairne observe that sulphuric acid produced cold in the course of his experiment with water ?

A. No, he did not. There was no water used by him along with sulphuric acid.

Q. Mr. Nairne produced cold by the evaporation of ether ?

A. Yes.

Q. There was no water used in that process ?

A. No water for evaporation.

Q. Did Mr. Nairne ever combine the two principles you have spoken of ?

A. He did not.

Q. He only discovered them separately ?

A. He exhibited or employed them, but did not discover either.

Q. What is your understanding of Mr. Leslie's discovery, in the opinion of the literary world ? Was it always considered as an original discovery ?

A. It has always been so considered.

Q. And that no other person was entitled to claim the merit of it ?

A. None.

ROBERT CADELL, Bookseller in Edinburgh, sworn.

Examined by Mr. JEFFREY.

Q. Mr. Cadell, you are a bookseller in Edinburgh ?

A. I am.

Q. You are a partner of the firm of Constable & Co. ?

A. I am.

Q. Was it your house that published the first edition of Mr. Leslie's Philosophy of Arithmetic ?

A. Yes it was.

Q. How many copies of the first impression were thrown off ?

A. Fifteen hundred.

Q. Was that considered a large impression for such a work ?

A. It was considered a large impression.

Q. When did that publication take place ?

A. In November, 1817.

Q. Was any stipulation entered into between your house and Mr. Leslie, in regard to the publication of the book and copies that might remain unsold ?

A. There was.

Q. What was the nature of that stipulation ?

A. We were to return to Mr. Leslie what copies of the book remained unsold at the end of two years.

Q. In that time how many copies of the book had been sold ?

A. Above 900 copies.

Q. Was that considered as a large sale for such a work ?

A. It was considered a very large sale.

Q. Did your house return the unsold copies ?

A. We did.

Q. Was any proposal afterwards made to your house to put out the book as a second edition of the work ?

A. There was.

Q. And did you accept of that proposal?

A. We declined it, as Mr. Leslie's terms were too high?

Q. Do you know that it was afterwards published as a second edition in 1820.

A. Yes.

Q. Who was the publisher of this second edition?

A. Messrs. Tait.

(The witness was here shown the first and second editions of the book.)

Q. You have looked at these two editions, and compared them with each other?

A. I have.

Q. Are there any additions to the original work to be found in the copy which is called the second edition?

A. There is an additional table, and there is some additional matter at the end of the book. From page 238 to the end, consisting of twenty pages, including the table, is reprinted as additional matter, and there is also a paragraph in the preface reprinted.

Q. Now I ask you, are they in your opinion the same, or different editions of the book?

A. They are different editions.

Q. Is the one edition larger than the other?

A. It decidedly is.

Q. Is there any form of language in your craft or calling, by which these improvements and additions to the original work could have been properly notified to the public in an advertisement, but by alluding to the book as an "improved and enlarged edition?"

A. None that I know of.

Q. Is there any advertisement or notice of these additions and improvements given to the public in the preface to that copy which you call the second edition?

A. There is a reference to both.

Q. Now, Sir, look at the last paragraph of the preface to the second edition; is that last paragraph reprinted?

A. The last paragraph is reprinted.

Q. Now, Sir, look at it again; is that paragraph not in these words: "In this edition I have introduced considerable improvements. The large multiplication table is now printed in a more convenient form, and other useful tables are inserted in the folding sheet; but the most valuable addition that I have made consists in the table of

quarter-squares, near the end of the volume ; which, to a certain extent, perform the multiplication of numbers more expeditiously than even logarithms themselves." Is that the last paragraph ?

A. It is.

Q. Does that paragraph contain a true account of the alterations and improvements made upon the work ?

A. It does.

Q. Now, Sir, do you know that any change was made in the selling price of the book ?

A. There was ; the price was raised from 8s. to 9s.

Q. Do you consider that all this was any imposition on the public ?

A. Decidedly not.

Q. In your opinion, was there any other proper mode that could have been adopted of noticing these additions and improvements of the work ?

A. In my opinion there was none.

CHARLES TAIT, Bookseller in Edinburgh, sworn.

Examined by Mr. JEFFREY.

Q. You are a bookseller in Edinburgh ?

A. I am.

Q. In that large shop in Prince's Street, at the corner of Hanover Street ?

A. Yes.

Q. Did you publish a second edition of Mr. Leslie's Philosophy of Arithmetic ?

A. I did.

Q. When was that edition published—was it in 1820 ?

A. Yes.

Q. You had seen the first edition of the work before ?

A. I had.

Q. Was the second edition you published the same with the first ?

A. Not at all.

Q. It contained some new matter, did it not ?

A. Yes.

Q. There was an additional table added, and about twenty pages of additional matter in all ?

A. Yes.

Q. Were you aware that the middle part of the book remained the same as before ?

A. I was.

Q. Now, Sir, was there any way of expressing, in the language of the trade, the alterations and additions made to the work than that which was adopted in the announcement of the second edition?

A. There was no other.

Q. Was the price of the book raised to the public?

A. It was made a shilling dearer.

Q. Was that a fair price?

A. Yes.

Q. Do you consider that the selling of the book in this way as a new and improved edition, and adding to the price of it, was a dishonest attempt to impose upon the public?

A. No, I do not.

Cross-examined by Mr. FORSYTH.

Q. You say there was no other way in which these alterations and additions in Mr. Leslie's book could have been notified to the public, but that which you adopted. Could not Mr. Leslie have inserted in the preface that these alterations and additions consisted of eighteen pages of notes at the end of the book—of a new title page—and of the paragraph in the preface, which contained that statement. Would not that have informed the public equally well of the nature of the improvements made upon the book as the mode which you adopted?

A. That would not have informed the public properly.

Q. Would it not?

A. No, it would not.

Q. The paragraph is in these words:—"In this edition I have introduced considerable improvements; the large multiplication table is now printed in a more convenient form, and other useful tables are inserted in the folding sheet; but the most valuable addition that I have made, consists in the table of quarter-squares, near the end of the volume, which, to a certain extent, perform the multiplication of numbers more expeditiously than even logarithms themselves."—Now, Sir, would not the public have understood the nature of the additions and improvements which were actually made, if, instead of this paragraph, Mr. Leslie had said, "I have added eighteen pages of notes, with a new multiplication table at the end of the book, and prefixed a new title-page?"

A. They would not.

MR. JEFFREY.—The witness means, that that would not have informed the public so well as in an advertisement that this was a new edition of the book, with alterations or additions.

CHIEF COMMISSIONER.—What do you understand, Sir, by a second edition?

A. A book that has been re-published.

CHIEF COMMISSIONER.—That I understand—but would the publication be considered as a new edition, if 500 copies of the work, remaining unsold, had been again offered to the public in an advertisement as a second edition, though no material alteration had been made in the body of the work;—for example—take Dr. Robertson's History of Scotland. If the whole edition, or first impression—say 1000 copies—were sold, and the book re-printed, that re-print, I understand, would be a second edition, though no new matter were added; but suppose that, of the 1000 copies thrown off at first, 500 copies remained unsold in the hands of the bookseller, and were to be returned by him to the author, and that these copies were again offered to the public, probably with some trifling alterations or additions, or with none at all, would that be considered as a new edition?

A. Yes.

Q. Is that the practice of the trade? Are there any instances of it?

A. There are many instances.

Q. Do you recollect of any?

A. None at this particular moment.

Q. Suppose the copy, or first edition, to be exhausted, and is reprinted as a second edition, and suppose part of the copies of this second edition to be sent back unsold, and to be put out again to the public with farther alterations, is that also a new edition?

A. That is a new edition.

Q. Does that depend on the magnitude of the alterations upon the work?

A. Not altogether.

Q. Is that considered as the practice of the trade?

A. It is.

SAMUEL AITKEN, Bookseller in Edinburgh, sworn.

Examined by MR. JEFFREY.

Q. Mr. Aitken, you are a bookseller in Edinburgh?

A. I am.

Q. And in partnership with Mr. John Bradfute?

A. Yes.

Q. How long have you been a partner with that gentleman in business?

A. Twelve years, and upwards.

Q. Are you acquainted with the fact of there having been a second edition published of Mr. Leslie's Philosophy of Arithmetic?

A. Perfectly.

Q. Are you aware of there having been any difference betwixt the first and second editions?

A. I am.

Q. Were the preface and title-page printed, and a large folding sheet, and twenty new pages added to the book?

A. Yes.

Q. And the rest of the book was just the original copies, with the variations now stated?

A. Yes.

Q. Now, Sir, do you think that these alterations and additions entitled the author and the publisher of this book, to call this a new or second edition of the work, in an advertisement to the Public?

A. I think it was necessary.

Q. Do you think the additional price of One Shilling, put upon the work, a fair price?

A. I think it a fair price.

Q. Do you think there was any other way that could properly have been taken to inform the Public that this additional shilling's worth of new matter was added to the work?

A. That is the proper mode of doing it.

Q. You have done this yourself?

A. I have.

Q. Can you name any instances of your having done so?

A. I can name one—Ross's Lectures. After a number of the copies had been sold, an index and appendix was added to the remaining copies, and they were sold as a new edition, with these additions.

Q. Is this considered as in strict conformity to the practice of the trade ?

A. It is.

Q. Now, Sir, look at that book, (a book handed to the witness ;) what is the name of that book ?

A. Condorcet's Arithmetic, translated by Johnston.

Q. Who appears to be the publisher of that edition ?

A. William Blackwood.

Q. Is that called a second edition ?

A. It is.

Q. Do you know any thing of the history of that edition ?

A. I do.

Q. Let us hear it ?

A. The book was originally printed and published by Mr. Goldie. At his sale, the copies remaining on hand unsold, were purchased by Mr. Blackwood, by whom they were published with a new title page, and sold as a second edition ?

Q. And is that one of the copies so sold by Mr. Blackwood ?

A. Yes, it is.

Mr. JEFFREY, to the Jury.—Gentlemen, this is the defender, Mr. Blackwood.

Cross-examined by Mr. FORSYTH.

Q. You have said that there was no other way of notifying these alterations to the public, but that which you have mentioned. Would it not have informed a purchaser of the second edition, though there had been no such advertisement, if it had been stated in the preface what the alterations consisted of ?

A. Yes, after they had purchased and read it.

Q. Do purchasers of books generally buy them without looking at them ?

A. They do so sometimes.

Q. Are you aware of any instance of an author joining along with the bookseller, in stating to the public that he had put forth a new or second edition of his work, when it was, in truth, nothing more than the original impression with a new title-page ?

A. I am not.

Q. Did you call Ross's Lectures a second edition ?

A. We called it a second edition with an appendix. We did not mean to call it a *reprint*.

Q. Do you understand by a new edition a reprint?

A. Not always.

Q. If a book is advertised as a new edition, when it is only a reprint, does that carry the idea to the public that it is a new work?

A. Certainly not. A reprint is certainly not an improved edition.

Q. In announcing the new edition of Ross's Lectures, did you, on the title-page, call it an improved edition?

A. We merely stated the fact, that there was added an Appendix and a complete Index.

Mr. JEFFREY.—If a book is printed with valuable additions, and a quantity of new matter, is that an improved edition?

A. Certainly.

LORD CHIEF COMMISSIONER.—This table, which I am unfolding, is a new part of the work I now hold in my hand; and from page 238 to the end of the book, consisting of twenty pages, the matter is entirely new. You see the quantity. What is between that and the title-page of the book, was got back, in consequence of a bargain betwixt the author and the bookseller, that at the end of two years what was not sold of the original impression should be given back. At the end of this period, the author got back from the bookseller the copies which remained on hand unsold. The author then added the new matter, which I have described to you, with an addition to the preface, and a new title-page, and the book has been republished in its present form. Now what is that called?

A. A "second edition, improved and enlarged."

Q. Do you think the using the original copies of the book in this edition makes any variation in the case?

A. In consequence of these alterations, I would certainly call the work a new edition enlarged.

ROBERT MILLER, bookseller in Edinburgh, sworn.

Examined by Mr. JEFFREY.

Q. Mr. Miller, you are a bookseller in Edinburgh?

A. I am.

Q. You were bred with the late Mr. Creech?

A. I was.

Q. How long have you been in business ?

A. Since the year 1794.

Q. Have you seen the second edition of Mr. Leslie's *Philosophy of Arithmetic* ?

A. I have.

Q. And you know that it contains some valuable additional matter ?

A. I understood the second edition contained a few additional sheets.

Q. It contains a new Multiplication Table ; a valuable table of quarter-squares ; and some important notes, making in all about twenty pages of new matter, with an addition to the preface describing these improvements ; and it has a new title-page. Now, Sir, how would you describe such a publication ?

A. I have no hesitation in saying that I would consider myself entitled to call it a *new* edition.

Q. Do you know of any other way of expressing such improvements, as I have now described, to the public ?

A. I know of no other.

Q. If large and valuable additions were made to the original work, would the book thus enlarged and republished be properly called a new and improved edition ?

A. I would have called it a second edition, enlarged and improved.

Q. Now, Sir, look at that book (shown Leslie's *Philosophy of Arithmetic*, second edition) what is that book called ?

A. It is called "Second Edition, improved and enlarged."

Q. Do you think that is a correct description of the book ?

A. I recollect seeing this book on the day of its publication. I think the description correct.

Mr. MORE.—Q. What would the public understand from the description given of it in this title page ?

A. They would understand that it was a new edition altogether.

Q. Have you ever done such a thing as has been done here, in the course of your profession ?

A. Yes, I have one instance distinctly in my recollection. Manners & Miller published a work of the late Mrs. Elizabeth Hamilton, entitled, "Popular Essays," of which 2000 copies were printed as the first edition. After we had

sold about 1500 copies, the sale of the work became rather slow. We stated to the author, that if she would add some new matter, we should, with her permission, print a new title-page for the remaining copies, and republish the work as a second edition. To this proposal the author at once agreed, and furnished a new preface, which was printed along with the new title-pages, and the book was republished, and sold as a second edition.

Q. I understand you to say, that the public would understand that the whole work was reprinted?

A. The public would certainly understand that the whole was reprinted.

MR. JEFFREY.—And would the public be any thing the worse for this?

A. Nothing the worse.

MR. JEFFREY here intimated to the Court that the case on the part of the pursuer was closed.

MR. FORSYTH.—Gentlemen of the Jury, I must begin with saying, that I regret it has fallen to my lot to address you in behalf of the defender, Mr. Blackwood, on the present occasion. Another gentleman, of great professional knowledge, had studied and prepared himself for this case, but in consequence of circumstances which are pretty generally known, he was under the necessity of leaving this city, rather suddenly, for England; and in this case, certainly requiring more time than I have been able to bestow upon it, and which its importance and novelty in our Courts would have required, had a few days longer time been given, I would have been relieved of the task I have undertaken; and you, Gentlemen, would also have been relieved, by having a much clearer state of my client's case laid before you than I can be expected to give.

Gentlemen, I now proceed to the discharge of my duty. The *dramatis personæ* in the present case are, the pursuer, Mr. Leslie, a Professor of Natural Philosophy, and an author. He is the pursuer of this action of damages, in which he comes before you, alleging that he has been defamed in his reputation as an author; hurt in his feelings and patrimonial interest; his scientific labours treated lightly; and his reputation as an honest man, and as a Christian also, attacked and injured. And for these

heavy wrongs and injuries, he asks a verdict from you of £5000 damages against my client. On the other hand, you have my client, Mr. Blackwood, a bookseller, not the author of the injurious libels of which the pursuer complains, but who is certainly responsible, as the publisher, for the consequences of them, if you shall find damages to be due.

But this remark must certainly have impressed the minds of many of you, that such an action as this is entirely new in this country. Where, Gentlemen, have you seen an instance of one author attacking another, as to the interpretation of tongues, and his merits and claims to originality, in literary works, followed up by actions of damages? We know of none in this country, we have heard of none in England that have proved successful; and before I conclude, I shall show you a case, ten hundred times stronger than the present, where the pursuer proved unsuccessful before Lord Ellenborough.

It is necessary that I should advert to the arrangement of the case. A long, and, in my opinion, unnecessary statement of it, has been gone into; and I shall follow the example of the pursuer's counsel in considering its details.

The first, and the greater part of the third issues, refer to a remark of the pusuer's upon the Hebrew language, and a complaint of Mr. Leslie's, that his Hebrew scholarship has been vilified by the defender, and his views misrepresented, in referring to a remark in his book upon Arithmetic, and regarding the Hebrew language. Then comes the second question about *heat*, or rather, about *cold*, as I think it should be called; and here we have a counter issue. Then we have a third about his being called a "parrot," and there also we have a counter issue. Fourth, we have a question about book making. And last of all, we have a question about the perverting the morals of the medical students; in which the pursuer seems to take upon himself, and claims to be considered as the Procurator Fiscal of the University of Edinburgh.

I shall follow this order, Gentlemen, in the remarks I have to offer upon the case. And,

1st, As to the question about HEBREW.

In the year 1818 or 1819, Mr. Leslie published his book upon Arithmetic; and how that publication has given rise to what you have heard stated in his favour this day, you may easily see beforehand. He speaks of the Hebrew

language in that publication, and I pray you to attend to what he says of the Hebrew language, and also of other languages, particularly the Greek; and about their mode of expressing the mystical numbers of the East. At p. 218 of his *Philosophy of Arithmetic*, not in the book itself, but in notes upon the text, he says, “The oriental nations appear generally to have represented the numbers as far as 1000, by dividing their alphabet into three distinct classes. But the Hebrew, *the rudest and poorest of all written languages*, having only twenty-two letters, could advance no farther than 400; and to exhibit 500, 600, 700, 800, and 900, it had recourse to the clumsy expedient of addition, by joining 400 and 100, 400 and 200, 400 and 300, 400 and 400, and 400 with 400 and 100. The Arabic alphabet, containing twenty-eight letters, supplied fully the three classes. It is very remarkable, that, when these letters are employed to signify numbers, they are written in the customary way, from right to left; but in adopting the peculiar numeral character appropriately styled Indian, the order is inverted, or proceeds from the left to the right. The Arabians, or Persians, have also another set of symbols, called the *Diwāni*, to express numbers, consisting merely of disguised and contracted words. This system extends as far as 400,000, and is much used in the East for keeping of accounts.”

At page 10, he refers to the Greek nations, and their mode of numeration, in the following manner: “The Greeks, after having communicated to the founders of Rome the elements of the numeral characters, which are still preserved, again exercised their inventive genius in framing new systems of notation. Discarding the simple original strokes, they sought to draw materials of construction from their extended alphabet. They had no fewer than three different modes of proceeding. 1. The letters of the alphabet, in their natural succession, were employed by them to signify the smaller ordinal numbers. In this way, for instance, the Books of Homer’s *Iliad* and *Odyssey* are usually marked. 2. The first letters of the words for numerals were adopted as abbreviated symbols. A simple and ingenious device was used for augmenting the powers of those symbols: any letter inclosed by a line on each side, and another drawn over the top, thus, $\overline{\square}$, being made to signify *five thousand* times more. 3. But a mighty stride was afterwards made in numerical notation by the

Greeks, when they distributed the twenty-four letters of their alphabet into three classes, corresponding to *units*, *tens*, and *hundreds*. To complete the symbols for all the *nine* digits, an additional appropriate character was introduced in each class.

“ This beautiful system was vastly superior in clearness and simplicity to the combinations of strokes retained by the Romans, and transmitted by them to the nations of modern Europe. It was even tolerably fitted as an instrument of calculation, to which the Roman numerals were totally inapplicable.

“ The Greek notation proceeded directly as far as *nine hundred and ninety-nine* ; but, by subscribing an *iôta*, or short dash under any character, its value was augmented a *thousand* fold ; or, by writing the initial letter of *myriad*, the effect was increased still *ten times more*. With the help of punctuated letters, therefore, it reached to *ten thousand*, comprising four terms of our ordinary scale.”

Gentlemen, he did more than this. After vilifying the Hebrews, and praising the Greeks, he gives, in a note, his tribute of unqualified praise in favour of the mystical numbers of the East. At page 227, he says, “ Pythagoras brought from the East a passion for the mystical properties of numbers, under the veil of which he probably concealed some of his secret or esoteric doctrines. He regarded *numbers* as of divine origin, the fountain of existence, and the model and archetype of all things. He divided them into a variety of different classes, to each of which were assigned distinct properties. They were prime or composite, perfect or imperfect, redundant or deficient, plane or solid ; they were triangular, square, cubic, or pyramidal. *Even* numbers were held by that visionary philosopher as feminine, and allied to earth ; but the *odd* numbers were considered by him as endued with masculine virtue, and partaking of the celestial nature.

Unit, or *monad*, was held as the most eminently sacred, as the parent of scientific numbers. *Two*, or the *duad*, was viewed as the associate of the *monad*, and the mother of the elements, and the recipient of all things material ; and *three*, or the *triad*, was regarded as perfect, being the first of the masculine numbers, comprehending the beginning, middle, and end, and hence fitted to regulate by its combinations the repetition of prayers and libations. It was the source of love and symphony, the fountain of ener-

gy and intelligence, the director of music, geometry, and astronomy. As the *monad* represented the divinity, or the Creative Power, so the *duad* was the image of matter; and the *triad*, resulting from their mutual conjunction, became the emblem of ideal forms."

And after going on in this way through all the numbers, he adds, " But it would be endless to recount all the visions of the Pythagorean school; nor should we stop to notice such fancies, if, by a perpetual descent, the dreams of ancient philosophers had not, in the actual state of society, still tintured our language, and mingled themselves with the various institutions of civil life. The mystical properties of numbers, originally nursed in the sombre imagination of the Egyptians, were eagerly embraced by the Jewish Cabalistic writers, and afterwards implicitly adopted by the fathers of the Christian church. But those fancies maintained an ascendancy in public belief until a very late period, nor were the Reformers themselves exempt from their influence. Luther, whose vigorous mind was yet deeply tintured with the credulity of his age, was accustomed to venerate certain numbers with a species of idolatry. Peter Bungus, canon of Bergamot, published, in 1585, a thick quarto, *De Mysticis Numerorum significationibus*, chiefly with a view to explain some passages in the Old and New Testament. The famous number of the Beast, 666, which has so often tortured the ingenuity of the expounders of the Apocalypse, is regarded by some divines as of Egyptian descent, the archetype of the three Monads, and combining the genial and sidereal powers; being indeed only the sum of all the terms of the magic square of 6, the first of the perfect numbers, and dedicated to the sun. But we still see the predilection for Luther's favourite number, *seven*, strongly marked in the customary term of apprenticeships, in the period required for obtaining academical degrees, and in the legal age of majority."

Professor Leslie had thought fit, in this way, to vilify the Hebrew, and praise the Greek language; and, Gentlemen, you have heard from the mouth of the witnesses for the pursuer himself, what is truly the state of the fact, that it is not true, that,—in the Hebrew mode of notation,—(at least of *that* Hebrew which we, of the Church of Scotland, understand to be Hebrew, and which has been handed down to us from the days of Esdras,)—the Hebrews are not under the necessity of having recourse to

the clumsy expedient of addition to express numbers. The Hebrew language contained twenty-two distinct letters, by which the numbers were expressed. In our own alphabet are to be found letters which might have been wanted—such as *c* hard and soft, *i* and *j*, *s* long and short, and some others, which being taken away would leave not more than twenty-two letters in our alphabet; but the Hebrew had twenty-two original letters, and had also five final letters; the final letters being used in this way—the letter *s* with us, is generally printed *ſ* long in the middle, and *ʃ* round at the ends of the words. The Hebrew, in like manner, had five letters, which were written differently at the ends of the words, and these were called final letters. Taking the twenty-two original letters, and adding the five final letters, it had twenty-seven letters to mark the numbers. This has been explained to you by the witnesses for the pursuer, who have told you that by means of these twenty-seven letters, the Hebrews go on to mark numbers to 1000, dividing the alphabet into three series—9, 9, and 9; the first nine signifying *units*, the second 9, *tens*, and the third 9, *hundreds*. These being used as the present numerals of the Arabic, or unwritten characters—1, 2, 3, 4, 5, 6, 7, 8, 9, and a cypher, 0, and then 2 and a cypher, 0,—and thus the Hebrew could go on as far as we do. It was not necessary for the Hebrews, therefore, as Professor Leslie says, to have recourse to the clumsy expedient of addition to express numbers above 400, because the first of the final letters expressed 500, the second 600, and so on; and this has been the case since the days of Esdras. Some Reverend and learned gentlemen have told you this day, that a majority of learned Rabbis think this is not the case, and that a respectable minority think that it is so. Gentlemen, Cicero has said in Latin, what I may be permitted to tell you in English, that “there is nothing so absurd but what some wise man has said.”—Look at what this pursuer says of the Roman language. He has not said that the language of the Romans is the rudest and poorest of all written languages—no such thing, Gentlemen. They were not a barbarous people, *they* were a nation of warriors and heroes, and could not therefore have been accused of gross ignorance, nor could it be said that *their* language was the rudest and poorest of all written languages. But, Gentlemen, you must all be familiar with their mode of marking the number of the chapters,

as you find it in your Bibles ; and which is done in this manner ; I denotes *one*, (I) ; I and I denotes *two*, (II) ; I and I and I, put together, denotes *three*, (III) ; I before V, or one *deducted* from five, denotes *four*, (IV) ;— V denotes *five*—V and I, or one added to *five*, denotes *six*, (VI) ; I before X, or one deducted from *ten*, denotes *nine*, (IX) ; X and I, or one added to *ten*, denotes *eleven*, (XI) ; X and I and X, or *ten* and one deducted from *ten*, denotes *nineteen*, (XIX) ; and X and X and I, or *ten* and *ten* and one, denote *twenty-one*, (XXI), and so on ; the difficulty of the operation, and the unfitness of the characters for numerical computation, constantly increasing in arithmetical progression. And yet this is the style in which the learned Romans went on in noting numbers ; yet the Roman language is not called by Mr. Leslie the rudest and poorest of all written languages, on account of its unfitness for arithmetical calculation. Then the learned Professor says, a “*mighty stride*” was made by the Greeks in the perfection of their alphabet. Gentlemen, what was it ? They had only twenty-four letters, they had not twenty-seven, because they had not the three nines, which are necessary for carrying the numbers as far as 1000, at least this is what Professor Leslie says. What did the Greeks do by their “*mighty stride* ?” Why, Gentlemen, they *borrowed* three letters from the Hebrew alphabet. But, Gentlemen, they are elegant and improved in their manners and mode of notation, and they have made a “*mighty stride*” in the improvement of their alphabet. No credit is given to the rude and ignorant Hebrews for the improvement of their language, after their return from the Babylonish captivity, although that did not consist in their borrowing a few letters from their neighbours, the Hebrews, but in the invention of five new final letters. No, no, Gentlemen, that would not have suited the views of the learned Professor. And what did the Greeks do farther ? (Mr. Forsyth was here proceeding to read from a written paper he held in his hand, referring to the “mother alphabet” of the Greeks, which was styled the Hebrew, when he was interrupted by Mr. Jeffrey, who objected to this course, as being a quotation from written evidence, which had not been proved and put on record. The Chief Commissioner stated, that nothing of consequence had yet been done to call for animadversion from the bench, but that Mr. Forsyth could not be allowed to quote from written documents which had not been put in

evidence. Mr. Forsyth rejoined, that he would quote from the law books; whereupon, Mr. Cockburn observed that the pursuer's counsel would not differ with him upon that subject—that was quite another affair. Mr. Forsyth then resumed his argument.) Gentlemen, this is the fact as to the language of the Hebrews, even from the proof led on the part of the pursuer. Mr. Leslie having made these harsh statements regarding the language of the Bible, it would have been strange, indeed, if, in this country of Christians, some notice should not have been taken of his assertion, that the Hebrew was the rudest and poorest of all written languages, and that it had recourse to the clumsy expedient of addition in expressing numbers, while the Greek language was praised in such lofty terms. Then, Gentlemen, think of his comparison of a most important part of the Christian Revelation; that of St. John, to the Pythagorean fancies, and the dreams of ancient philosophers. If all this was to be found in a book published here, in this Christian land, and where we have a free press, it would have been strange, indeed, if it had not been noticed. The pursuer, Mr. Leslie, the author of these statements, is a Professor of Natural Philosophy in the University of this City; he is celebrated for his scientific researches; he is known over the world as a man of letters; he has received medals of distinction, and compliments for his learning and researches; he has been elected a Member of the National Institute of France, on account of his discoveries in science; and he has exhibited his experiments in London before the Royal Society, and elsewhere, with universal applause; and yet, in a book written and published by him upon the Philosophy of Arithmetic, he makes reference to the canon of Scripture in a way and manner most reprehensible. Gentlemen, he is a teacher of youth, privileged by his situation, and paid by the public, and yet he puts forth a statement, going entirely out of his way for that purpose, in a book upon Arithmetic, in which he compares the holy Apostle, St. John, to the heathen philosopher Pythagoras. Such a statement called forth animadversion, and no wonder though it was severe. The article has been read to you in detailed extracts, and the writer of it has been accused of being actuated by malice against the pursuer; but, Gentlemen, I beg you will read the context, and not take your impressions of that stricture upon the pursuer's writings from the garbled and partial extracts taken from it.

It begins thus, "Mr. Editor," (Mr. Blackwood, you know, Gentlemen, is a bookseller and the publisher of a work which has a very great circulation, a periodical Magazine, in the 35th number of which, at p. 501, there is the following statement,) "Mr. Editor, Dublin, Jan. 20th, 1820.—In a trifling composition I sent you some time ago, it was asserted that Professor Leslie had thought proper to pass a heavy censure on the Hebrew language, in his *Philosophy of Arithmetic*; though, as I added, it could be proved from his own writings, nay, from the very passage that contained the charge, that he is ignorant even of the alphabet of the language on which he thus presumed to offer an animadversion. The professional *dictum* alluded to is this:—‘The Oriental nations appear generally to have represented the numbers as far as one thousand, by dividing their alphabet into three distinct classes, but the Hebrew, *the rudest and poorest of all written languages*, having only twenty-two letters, could advance no farther than 400, and to exhibit 500, 600, 700, 800, and 900, it had recourse to the clumsy expedient of addition, by joining 400 and 100, 400 and 200, 400 and 300, 400 and 400, and 400 with 400 and 100.’ *Philosophy of Arithmetic*, p. 218.

“*The rudest and poorest of all written languages!* By my troth, Mr. John Leslie, these be bitter words! but the latter part of the sentence, by displaying the utter ignorance of the Professor, happily renders the railing of the former perfectly innocent. Indeed, so much ignorance and impertinence combined, will hardly be found, in so short a compass, in the works of any other writer of the smallest literary character. The merest smatterer in Hebrew. Any one who had read the first page of a grammar, could have informed Mr. Leslie, that the Hebrews had *not* recourse to the clumsy expedient of which he accuses them, and that their alphabet supplied them with characters sufficient for expressing numbers as far as a thousand. It is clear that the Professor was totally unacquainted with the letters of the language he was criticising, or he would have known that the five finals (technically called *Camnephatz*) are used to express the five last hundreds; (there is a *star* before the word “*Camnephatz*,” referring to a note at the bottom of the page, where the final letters with the corresponding numbers are marked,) and therefore, that the glory of inventing the expedient, which he describes with such imposing minuteness of detail, is due entirely to himself. So

much for his qualifications to decide on the merits of Hebrew.

“ But it appears to me that he has a peculiar pique against the language,—that his censure arises as much from spleen as ignorance ; for the Roman method of notation is still more clumsy than this fancied Hebrew system—not only their hundreds but their tens, and even their units, being formed by repeated, and often very cumbersome additions : and yet Mr. Leslie does not pour forth the vials of his wrath on the language of Latium ; nay, he even finds in this unwieldy notation, “ a sample of a philosophic language,” (p. 210.) Nor is he angry with the Greeks, (whose system he highly panegyricizes, p. 11, &c.) although he knows that their alphabet is as insufficient for the purposes of notation as he supposed Hebrew to be, and that they are, in consequence, obliged to borrow three letters to supply the defect. I am pretty sure he does not know the source from which they were borrowed ; and he may, perhaps, be somewhat astonished that these three letters were lent to the rich Greeks, by the poor Hebrews ; Bau (6), Koppa, (90) and Sanpi, (900) being only Vau, Koph and Tzaddi. (There is a foot note here, by the writer of the paragraph thus—“ Koph is 100 ; but as the Greeks borrowed Tzaddi final for 900, they were compelled to use some letter different from Tzaddi for 90, and they took the next to it, ק.) It may be also new to him, that the two mathematical words of eastern origin, Sepher, (p. 112) and Karatha (p. 133.) the only two oriental words of any consequence, I believe, which he quotes, are Hebrew—ספֿר numeravit, and כִּרַּת secuit. They may be Arabic also ; but to enter into the controversy respecting the comparative superiority of Hebrew and Arabic, for the edification of Professor Leslie, would be as profitable as to set about demonstrating the seventeenth proposition of Euclid’s twelfth book, to a person who did not know a right line from a curve, much less a polyhedron from a sphere.

“ I do not well know how to account for this pique. The only reason the learned Professor seems to assign, is the smallness of the alphabet : certainly a very characteristic objection for an arithmetician, who values every thing by number. But though this principle may look very well in the golden regulations of the rule of three, I am inclined to think it does not succeed altogether in languages ; for thus the dialect of Homer could be calculated to be far

inferior to the Romaic, and the tongue of his majesty; the Emperor of all the Russias, would take lead of the other languages of Europe by a considerable majority. We must look, therefore, for some other reason; and perhaps we may find it in the unhappy circumstances in which Hebrew is placed—it is *the language of the Old Testament*;—the language, as a philosopher like Mr. Hume, or a partizan of Mr. Hume's, would say, dedicated to superstition, and is, therefore, like every thing else connected with such a cause, to be attacked by that tolerant and equitable sect *per fas et nefas*. But in doing so, I may be permitted to remark, there should be some little knowledge of the ground displayed. It is not good generalship to entrust even the details of a siege to a blundering gunner, or a rash volunteer. And I must consider the Professor as a most unfortunate, though perhaps a courageous *enfant perdu*, after this specimen of his skill, although he may be enlightened enough, in other respects, to be entitled to sneer at the credulity of Luther, the dreams of the Christian Fathers, and the 'fancies' of St John," p. 230.

"Professor Leslie's *mistake*, it may be said, is a mere trifle, not worth the paper employed in exposing it. It is true, indeed, that, as no man is actually bound to know Hebrew, there is no great disgrace in making an erroneous assertion concerning this language; but I assert, that no man has a right to pass a dogmatical and insolent judgment on any branch of knowledge whatever, of which he is so wretchedly ignorant as not to know its first elements. Mr. Leslie would look, with deserved contempt, on him who should venture to call Euclid a poor mathematician, if the very sentence which conveyed the charge furnished also a proof that the critic was ignorant of the definitions of geometry. And how are *we* to look on the Professor himself? He may believe me when I tell him, that, in the eyes of those who know any thing of the subject, he makes as awkward a figure as the most deficient digit he ever 'caused modify.' (There is a foot note as to this expression; the writer says—An elegant phrase of Mr. Leslie's—"To transform the ordinary characters, (says Mr. Leslie, p. 117.) therefore, into deficient digits, I have *caused modify* their shape thus"—(then he writes the letters *sideways*)—and a very wise and pretty modification it is. For the puzzle it occasions, you need only look into the work.) He may also assure himself that the rule, *ne sutor ultra crepidam*,

is truly a golden one. He is, perhaps, a mighty respectable third or fourth-rate mathematician, a refrigerator of any rate he pleases, and an arithmetician scarcely second to Cocker himself; but when, on the strength of these qualifications, he thinks fit to step into philosophy, or to invade the province of critics and scholars, nothing can be more pitiful. And yet (page 232) he blames Joseph Scaliger (whose name as a man of learning is *rather* higher than Mr. Leslie's as a mathematician) for quitting his usual studies to meddle with mathematics. So easy is it to perceive the 'presumptive dogmatism' of another, and to overlook our own!

"You perceive I have not said a word in defence of the Hebrew language: I thought it would be ridiculous to offer any against such an assailant. I shall, however, add, that those who are acquainted with it, know, that for simplicity of construction, regularity of derivation, conciseness, perspicuity, and force, it is not *equalled* by any language in the world; but, on this occasion, I need not appeal to Hebrew scholars: he who reads the Bible in his vernacular tongue will agree with me, that the man who attributes the extreme of rudeness and poverty to the language of the sublime lyric effusions of Isaiah, the energetic drama of Job, the unrivalled pastoral of Ruth, not to mention other splendid passages of Scripture, which instantly crowd on the memory, must be satisfied to lie under the imputation of pitiable ignorance, or still more pitiable prejudice.

"Apologizing for the length of this letter, which has grown to a much greater size than I intended, I am, Sir, your most obedient servant."

Now, Gentlemen, this is the statement; and the question is, whether the pursuer, Mr. Leslie, is able to establish that this statement was made against him *through malice*; or whether it is a reasonable statement, and within the limits of fair discussion. This question is put to you in one of the issues, in the following words, 1st, "Whether the whole, or any part of the said words are of and concerning the pursuer, and whether the pursuer is therein falsely, *maliciously*, and injuriously represented, and held up to ridicule and contempt, as ignorant of the Hebrew language, and even of the Hebrew alphabet, or as being guilty of impertinence, or of disliking the Hebrew language, merely because it is the language of the

Old Testament, and to be attacked, *per fas et nefas* ; or as being an *enfant perdu*.”

Now, the question for you to try is, Is it here made out that the writer of the article I have read to you, published that statement *from malice to the person of Mr. Leslie*, or is it a lawful criticism on a printed work given to the world?

There is another question for your consideration in the issues, Did the pursuer, Mr. Leslie, go out of his way to attack the Hebrew language, merely because it was the language of the Bible, or did I step out of my way to defend it? Mr. Leslie published a book on Arithmetic, and in it he attacks the language of Scripture, and the holy apostles of the Christian religion, and I stood up and opposed him ; and the question is, Who went out of his way, and committed an offence in this matter? That is the proper question for you to determine.

Gentlemen, we have in this country the liberty of the press. It is a free press—we may write and print what we please—we have liberty to do so—but we may be punished for doing so if we go beyond the bounds of fair criticism. My plea is, that the criticism in the article I have read to you is lawful criticism. If any person places himself in a public situation, his public conduct may be scanned and criticised through the press. For instance, if he holds a public situation under government, his conduct in that situation is the subject of fair animadversion. In another way, a person may place himself in a situation which may expose him to free and full discussion. If he should become an author, and publish his writings to the world, and if I only attack him as an author and criticise his writings, I am only exercising the rights of a British subject in availing myself of the liberty of the press. The liberty of the press in this country is well known to you. We are at full liberty to discuss the public conduct of public men, and to attack or defend the measures of government, and to maintain the rights of the people through the medium of the press—we may say what we think fit of Mr. Pitt, Lord Londonderry, and Mr. Vansittart, or any other minister of the crown, in regard to their public measures ; but if we go out of that path, if we step into the walks of private life, and accuse them as bad men, as guilty of misconduct and neglect of duty in their relative situations, as husbands or fathers ; if we enter their private dwellings, and thus attack them, it will be no excuse for us to say, that they are public men, and

the servants of the public. But if we merely attack their *measures*, and are found fault with for doing so, our answer is, they have put it in the power of the public to do so, by accepting of a public office; and, in regard to that office, they are the servants of the public, and the property of the public. In like manner, if an instructor of youth in his discourses to his pupils, should instil into their minds principles contrary to the established faith, whether as a professor in an university, or as a private teacher; or, if the ministers of the Gospel in the pulpit, (and the people of this free protestant country do not go to private houses to be instructed by their priests, but to church,) should do the same thing, and we should find fault with them for doing so, through the medium of the press—we do nothing but attack them in their public characters, and we are entitled to do so. I need not tell you, Gentlemen of the Jury, that all this is right, and as it ought to be in this free country. By this means,—by means of the press,—the ministers of the government may be told when they go wrong, and their improvident and ruinous measures may be checked; at least, they may be instructed by means of the press. This advantage we possess as a free people above all other nations. But, Gentlemen, this instrument, the press, so powerful in itself, and so beneficial and salutary when well directed, is very liable to abuse. One author may publish the most violent and abusive calumnies against an individual in office—he may accuse him of vice, injustice, and neglect of duty—and he may do this lawfully; but if one man is thus entitled to accuse another, in the face of the world, of violence and corruption, through the medium of the press, another may lawfully use that engine to check and correct such statements, if they be false. In like manner, if an author publishes a work, in which, the moment it comes into the hands of the public, it is discovered that there are errors, mistakes, and fallacies; another author may lawfully publish a work to correct these mistakes and fallacies. If, in a book published and given to the world, (as is the case here,) such fallacies occur—and it cannot be said that the pursuer is infallible in his publications,—another writer may challenge the dogmas it contains; and he is entitled to do so. If he keep to the book, and does not go out of his way, to attack the author in his private capacity, he does no more than what he is entitled to do. It is no ground of complaint against such criticism, to say,

“ It is very true, you have not attacked me *personally*, as a private individual, but you have attacked me as an *author*—you have cut up my book—my books won’t sell, if you are allowed to hack and tear at them in this way ; I get large sums of money for my books from Mr. Blackwood, Messrs. Bell and Bradfute, &c. and they won’t look at any more of my books, if you thus go on to run them down.” My answer is, that I am entitled to bring forward against such works all the wit, and sarcasm, and ridicule that I am possessed of ; and to chastise the author of them for his ignorance and presumption, if I think he has fairly subjected himself to such treatment. This I may lawfully do, if I keep to a fair criticism upon the author and his works. If I keep to these rules, it is impossible that I can be found fault with in a Court of Justice. (The learned gentleman here referred, in support of his argument, to cases tried before Lord Ellenborough in England, and to Starkie’s Treatise on the law of Slander. He also referred to a case tried before the same judge, and reported by Campbell, where his lordship laid down the law—that authors and their works were the fair subjects of the severest criticisms ; and then proceeded,)—Gentlemen, I shall now refer you to a case much stronger than the present. It is the case of Sir John Carr, Knight, *v.* Hood, also to be found in Starkie’s book, (p. 266.) Sir John had travelled over different parts of the Continent, and of this country also, and had published the result of his observations, under the title of “ A Stranger in Italy”—“ A Stranger in France”—“ A Stranger in Ireland”—and so forth. And while a similar work, containing an account of the observations he had made in a tour through Scotland, was in the press, a person wrote a book, and published it, in which he supposes that these productions were the works of Sir John Carr, and he supposes Sir John to be sitting in his study writing out his notes *before* setting out upon his Irish tour, and treats him in such a manner as to make him ridiculous, representing him as complaining of its being an uphill work, and floundering in the midst of it ; and he prefixes to the book a picture of Sir John on his return from Ireland, weeping, and holding a handkerchief to his face, with a man behind him, bending under a load of books, marked as Sir John’s Notes of his tour, and carrying his wardrobe in a pocket handkerchief. But, Gentlemen, it will be better that I read the case to you, and, in doing so,

I shall keep strictly to the law report. The declaration, or the summons, as we may call it, (Mr. Jeffrey here said, —The declaration is not the summons, but what is equivalent in England to our condescendence, containing a specification of the facts,) Mr. FORSYTH.—The declaration then states,—That the plaintiff “ had been the author of several productions, called, &c. but that the defendant, intending to expose him to contempt and ridicule, had published a malicious and defamatory libel concerning the said Sir John, intituled, ‘ My Pocket-Book, or Hints for a righte merrie and conceited tour, to be called, the Stranger in Ireland in 1805, by a Knight Errant.’ ” The same libel, containing a malicious and defamatory print of and concerning the said Sir John and his books, called “ Frontispiece,” and intituled, “ The Knight leaving Ireland with regret ;” and representing, in the said print, a certain false, scandalous, malicious, defamatory, and ridiculous representation of the said Sir John in the form of a man of ludicrous and ridiculous appearance, holding a pocket handkerchief to his face, and appearing to be weeping ; and also a certain false, malicious, and ridiculous misrepresentation of a man of ludicrous and ridiculous appearance, following the representation of Sir John, representing a man loaded with and bending under the weight of three large books, one of them having the word “ Baltic” printed on the back thereof, and a pocket handkerchief appearing to be held in one of the hands of the said representation of a man, and the corners thereof appearing to be held or tied together as if containing something therein, with the printed word “ wardrobe” depending therefrom, for the purpose of rendering the said Sir John ridiculous, and thereby meaning that one copy of the said first mentioned book of the said Sir John, and two copies of the book of the said Sir John, secondly above mentioned, were so heavy as to cause a man to bend under the weight thereof ; and that his, the said Sir John’s, wardrobe was very small, and capable of being contained in one pocket handkerchief.” The declaration concluded by laying, as special damage, that Sir John had been prevented from selling to Sir Richard Phillips, for L.600, the copyright of a book of which the said Sir John was the author, containing an account of a tour of the said Sir John through part of Scotland.

Lord Ellenborough, as the trial was proceeding, intimated an opinion, that, if the book published by the defendant

only ridiculed the plaintiff *as an author*, the action could not be maintained." And his Lordship further observed,—"Here the supposed libel has only attacked those works of which Sir John Carr is the avowed author; and one writer, in exposing the follies and errors of another, may make use of ridicule, however poignant. Ridicule is often the fittest weapon that can be employed for such a purpose. If the reputation or pecuniary interests of the person ridiculed suffer, it is *damnum absque injuria*. Where is the liberty of the press, if an action can be maintained on such principles? Perhaps the plaintiff's Tour through Ireland is now unsaleable, but is he to be indemnified by receiving a compensation in damages from the person who may have opened the eyes of the public to the bad taste and inanity of his compositions? Who would have bought the works of Sir Robert Filmer after he had been refuted by Mr. Locke? But shall it be said, that he might have sustained an action for defamation against that great philosopher, who was labouring to enlighten and ameliorate mankind? We really must not cramp observations upon authors and their works; they should be liable to criticism, to exposure, and even to ridicule, if their compositions be ridiculous; otherwise, the first who writes a book upon any subject will obtain a monopoly of sentiment and opinion respecting it. This would tend to the perpetuity of error. Reflection on *personal character* is another thing. Show me an attack on the moral character of the plaintiff, or any attack upon his character unconnected with his authorship, and I shall be as ready as any judge who ever sat here to protect him; but I cannot hear of malice on account of turning his works into ridicule."

The counsel for the plaintiff still complaining of the unfairness of this publication, and particularly of the print affixed to it, the trial proceeded.

"Lord Ellenborough said—Every man who publishes a book commits himself to the judgment of the public, and any one may comment upon his performance. If the commentator does not step aside from the work, or introduce *fiction* for the purpose of condemnation, he exercises a fair and legitimate right. In the present case, had the party writing the criticism followed the plaintiff into domestic life for the purposes of slander, that would have been libellous; but no passage of this sort has been produced, and even the caricature does not affect the plaintiff,

except as the author of the book which is ridiculed. The works of this gentleman may, for aught I know, be very valuable; but whatever may be their merits, others have a right to pass their judgment upon them—to censure them, if they be censurable, and to turn them into ridicule, if they be ridiculous. The critic does a great service to the public who writes down any vapid or useless publication, such as ought never to have appeared. He checks the dissemination of bad taste, and prevents people wasting both their time and money upon trash. I speak of fair and candid criticism; and this every one has a right to publish, although the author may suffer loss from it. Such a loss the law does not consider as an injury, because it is a loss which the party ought to sustain. It is, in short, the loss of fame and profits to which he was never entitled.

Nothing can be conceived more threatening to the liberty of the press than the species of action before the Court. We ought to resist an attempt against free and liberal criticism at the threshold." The Chief Justice concluded by directing the Jury, that, if the writer of the publication complained of had not travelled out of the work he criticised, for the purpose of slander, the action would not lie; but if they could discover in it any thing *personally slanderous* against the plaintiff, *unconnected with the works he had given to the public*, in that case he had a good cause of action, and they would award him damages accordingly, —**VERDICT FOR THE DEFENDANT.**"

Now, Gentlemen, you have heard the verdict of an English Jury, and the sentence of an English Judge, in a case where the ridicule complained of was greater, in a tenfold degree, than it is here, both of the person of the author and of his books. His books were taken to pieces, and cut up, sentence by sentence; but, because the critic had not descended into his private life, but kept to his works, he was acquitted, upon this principle, that, if a writer keeps to the subject-matter of the work he is criticising, however severe and sarcastic he may be, he is safe and protected under the liberty of the press.

It is true that the person who corresponded with Mr. Blackwood in the present case attacked Mr. Leslie's book upon Arithmetic, but he did nothing else. It is said the writer of the article was actuated by malice against the pursuer, merely because he attacked the passage in his book which he thought was abusive of the language of re-

ligion. That single sentence is said to have excited all this malice ;—it is said to be the beginning—the middle—the end—the top, and the bottom of it—and that I had attacked his religious principles. Now, in the first place, I said merely that the passage in the book was incorrect—that the writer of it was ignorant of his subject—that the language of religion was attacked merely because it was so—that the religious sentiments of the *author* were not sound ; and I said so boldly—I spoke this of him *as an author*—I did not go into his private life. I spoke of him, indeed, as a Professor in the University, as I would do of a minister of state ; but I spoke of him also *as an author*. I ascribed to him erroneous religious opinions, and of having a dislike to the Hebrew language because it was the language of our holy religion ; which he had denounced as the rudest and poorest of all written languages. I said he was ignorant of the language he was criticising, and I said that his ignorance was demonstrable to the youngest Hebrew scholar. He said it was necessary for the Hebrews, in calculating numbers, to have recourse to the clumsy expedient of addition. I denied this, and I said that he was ignorant even of the letters of the Hebrew alphabet. And it is worthy of notice, Gentlemen, that, after I said all this, Mr. Leslie published the second edition of his book, in which, at page 242, in a note, which has been read to you, he makes an additional statement upon the subject, with a view to correct the error in the first. Why, Gentlemen, when he was adding these notes, he might have added other explanations. He has told you, at page 241, that the Greenlanders reckoned by *fives*. To express *twenty*, they open the fingers of one hand *four* times ; and, to signify a *hundred*, they show all the fingers and toes *five* times, or say *five men*." He tells you that the same terms for numbers prevail among all the various tribes, from Madagascar to New Guinea and the Philippine Isles. He tells you of the poverty of the Ende language, and of the Flores ; he then says,—after alluding to the poverty of the language of the Malays and Javanese, in which latter language the name of one bit of gold signifies 400, and two bits 800,—“ The JEWS, *we have seen*, followed nearly the same idea ; the higher numbers, as far as one thousand, having been represented in the *ancient Hebrew* by repeating the alphabetic character for 400.”

Gentlemen, this is the only passage where he makes men-

tion of the *ancient* Hebrew in his book ; but still he speaks of the “*Jews*.” You will be so good now as notice the plea on the other side of the bar. When a student of divinity is called on by the rules of the General Assembly of our church to explain a passage in the Psalms, in the *Hebrew* language, there can be no doubt of its being the *Chaldaic* version that is referred to. Professor Leslie’s ignorance is therefore demonstrable. If the student, in explaining the Hebrew numbers, should say that their mode of notation was by taking 400, and adding 100 to mark 500, and so on, he would have been justly accused of ignorance. Some of the learned Rabbis this day examined before you, have said, that the final letters were brought in *before*, but that some have thought they were not introduced until *after* the birth of Jesus Christ ; and one of them has even said, that the pursuer might be ignorant of the Hebrew language, although he might not be ignorant of the numerical powers of the five final letters. If the Hebrew language be what I understand it to be, and as every one here must understand it to be, viz. the *Chaldaic* character, it is clear that Mr. Leslie did not know the letters of that language at the time he wrote the passage objected to, when he did not even know the manner of noting used by the Hebrews. But his defence is, that he meant the *Samaritan* character, or the *ancient Hebrew*, and with a view to this defence, he has introduced into this second edition of his book, the word “*ancient*,” instead of saying, in a manly, open, and candid manner, that he had fallen into a mistake in his first edition. He was told by me that he had done so, yet he does not acknowledge his error, while it is evident that the words “*ancient Hebrew*,” were put in, in the note to which I have referred, merely to give him an opportunity of shaping his defence in the way he has done. Or, if this supposition be incorrect, my learned friends on the other side of the bar, seeing that it was impossible to defend Mr. Leslie upon his knowledge of Hebrew, must have thought of getting him out of the scrape by saying, when he first published his book, that he was writing about the *Samaritan* language. Gentlemen, they might have said the same thing as to the Latin ; but what would the Scotch, English, and Irish students at this University understand by this expression,—“*The Hebrew language*, the rudest and poorest of all written languages,”—would they conceive it to be the *Samaritan* ? The Sama-

ritan language does not contain more than the five books of Moses, while the students are required to study the whole of the Scriptures, including the *Psalms* and the *Prophets*, in the *Hebrew* language. But now let us see what the learned gentlemen, who have been examined before you, say upon this subject. One of them has told you, that a *majority* of the learned are of opinion that the present Hebrew character—or the *Chaldaic*—was used in the sacred writings immediately after the return of the Jews from the Babylonish captivity; and that a *respectable minority* are of a different opinion, and that it was not introduced till a later period; and you have been told of one who was of opinion that it is as old as the days of Moses, and the Flood. As men of common sense, you must understand that the Hebrew language spoken of by the pursuer, as the rudest and poorest of all the written languages, is the language which, in the church of Scotland, is termed the Chaldaic character, but which is usually called Hebrew. If Mr. Leslie meant some other Hebrew, it is not what the laws of the Church of Scotland oblige our youth to study. If he meant the Samaritan character, he should have said so in his book, and, in that case, we would not have been here to-day. Why did he not say so, if he meant the Samaritan? If he had put in his book the word “Samaritan,” and not the word “Hebrew,” I would have understood him, but he has not done so. But he tells you his reputation is attacked, and that he is accused of ignorance of the Hebrew language, which I say he does not understand, and for this he claims damages. Why, Gentlemen, we may suppose a Frenchman to be accused of ignorance and presumption, for having said in a book, that the English language, as used by Milton, by Dryden, by Pope, and by Addison, was the rudest and poorest of all written languages,—and that he answers this accusation by saying, Oh no, I did not mean the English language, as it was spoken and written at the time when these great men wrote. I meant the English, as it was spoken in the days of King Arthur, or the Saxon Heptarchy, and I bring my action of damages, because it was not your language that I meant. Gentlemen, you will say that all this would be ridiculous enough, and that no court of law could possibly entertain such a case, and yet you see the very same thing done here. The pursuer says, I did not write this of the Chaldaic language, I only said this of the Hebrew. And the

Frenchman says the same thing of the English language, that he meant the Saxon. But, Gentlemen, I pray you to observe, what the pursuer says in the note I formerly read to you. He says, "the Jews, we have seen, followed nearly the same idea; the higher numbers, as far as a thousand, having been represented in the *ancient Hebrew* by repeating the alphabetic character for 400." You see here, that the "Jews" and the "*Ancient Hebrew*" are put together; but there is a very great distinction between them, and this has been proved to you this day. You know from the sacred Scriptures, that a revolt happened among the Jews in the reign of Rehoboam, the Son of Solomon. Two of the tribes remained faithful to their king, but ten of the tribes followed Jeroboam to Samaria, and he was declared king of Israel. You know also that the kings of Israel erected a Temple on Mount Gerizzim, and set up a Golden Calf, which the people of Israel worshipped as their god, and that they never afterwards went up to Jerusalem to worship in the Temple; and from that time, the Jews had no dealings with the Samaritans. You know this historically from the Old Testament, and in the New Testament Scriptures, you have it recorded, that the Samaritan woman expressed her surprise to our Saviour at the well,—when he asked for water,—that he, who was a Jew, should ask water from her, who was a woman of Samaria. Here Jesus Christ is spoken of as a Jew, as descended of the Jews—who were these Jews? They were those who continued the line of prophecy, and the line of our Saviour as the Messiah promised to the fathers, and the language of prophecy was that of the Old Testament. You have been told by the witnesses, that the Chaldaic language was introduced by Esdras on the return of the Jews from the Babylonish captivity, because the people, during their residence at Babylon, had entirely lost their original language, and therefore it was necessary to have a version of the Scriptures written in the Chaldaic language, as that which was spoken by the people. Now, I presume the fact to be this, that Esdras found a copy of the book in the Temple of Solomon, where it had remained a long time unnoticed, and that it was immediately read and explained to the people, in the language in which it was written, and which was their own. The language of a whole people could not easily have been destroyed in seventy years, when they were all living together, and con-

versing in that language, and it is well known the Jews were remarkably attached to their language, as being that of the oracles of truth. I think, therefore, Gentlemen, that all this which you have heard about the change of the language, is entirely a mistake, and that the original language continued to be used as the written language of the Jews. The book contained, besides the books of Moses, the Psalms and the Prophets, which, at least the Psalms, were in daily use among the people, and which formed an essential part of their religious worship. How is it possible then to understand, that the original language could have been totally lost? And can you allow this gentleman, the pursuer, when he is thus foiled upon his knowledge of the language, to turn round, and make such a profession as he has done here—which he would not have resorted to but from necessity, and which is but a mere quibble—"It is true I wrote about the *Hebrew* language, but I meant the *Samaritan*." Gentlemen, this will not go down. The person who wrote this article, said that it was the *Hebrew language*; and I said that the man who said so, did not understand the Hebrew language. This is all I did say, and that, you will allow to be the interpretation of charity. I call your attention to what he says, "But the Hebrew, the rudest and poorest of all written languages." If he meant the Samaritan, he should have said so. If he made the statement in ignorance, it was certainly a piece of presumption in him to write this of a language of which he was ignorant. If the Hebrew language was the language of the Prophets, and, being so, this gentleman chose to tell the world that it was the rudest and poorest of all written languages, I consider that it was a stretch of charity to say of this man, that he did it in ignorance of the language he was writing about; for he was holding out his great credit as a man of science and research, and of a name known in the literary world, to run down the language of the Bible, which we, in this Christian country, hold in respect and veneration. I have assumed that he was actuated by certain motives when he wrote this passage, that it proceeded from ignorance, or some quality different from that which should influence the conduct of one who had a correct notion of the language of the Bible and of the Christian faith. Every *divine* does the same thing in writing against his antagonist in a polemical controversy. Every person writing against the opinions of another, ascribes

some reason or other for the statements of his opponent—and this is what I did.

He tells us that the Hebrew language is the *rudest* and *poorest* of all written languages—and he accuses me of malice for contradicting him, and saying that he must have said so from spite to the language of the Bible. What reason had I to dislike him personally for making this statement? He gives a very bad reason for the expressions he has made use of in his book—he says it is the *rudest* and *poorest in respect of notation*. Hate him! I no more hate him than I hate Chian-Cho-Chu, the King of China. I do not know him, and therefore I do not hate him—Hate his book! I do not hate *it*—I cannot entertain such a feeling for a book. But I said this gentleman hated the Hebrew—not for its being the *rudest* and *poorest* of all written languages, for it is evident he does not know the language; but he hated it for what it contains. The only book of ancient Hebrew in existence is that which contains the five books of the Old Testament, written in the Samaritan character; and, therefore, how a man, not knowing this, could have been accused of hating the Hebrew language, which is written in the Chaldaic character, is not quite intelligible. But there is more than this; he makes a *false* statement upon the subject. He had no warrant for saying that it was the *rudest* and *poorest* of all written languages. He had none whatever for saying so. A language may be said to be a poor and a rude language, when it *has not the power of expressing ideas*; when it has not a word for a “chariot,” a “horse,” or for a “heaven.” I understand the Hebrew language to be what is called the *Chaldaic*, and if Mr. Leslie had looked at the Hebrew Bible, *as written in that character*, or if he had even looked into the vernacular edition of it, which is in the hands of all of us, he would have seen good reason to alter his opinion of the Hebrew language. In the very commencement of the book, he would have found these words, “Let there be light and there was light.” An expression which has been regarded by the greatest men in every age as one of the sublimest ideas that can be conceived. Then, look at the story of Abraham, the Father of the Faithful, and his son Isaac; then to the affecting history of Joseph and his brethren; and see if, in all the Greek language, which this gentleman so highly eulogises, there is to be found finer language, or more pathetic sentiments. And then there is the Consecra-

tion prayer of Solomon, the son of David, in which are those sublime expressions, "But will God indeed dwell on the earth? Behold the heaven, and heaven of heavens cannot contain thee; how much less this house that I have builded." Then there is the beautiful pastoral of Ruth; there is war; there is peace; there is legislation; look to the laws of Moses, and say where is there loftier expressions or juster conception, to be found in any language. And all this too, in a language which this gentleman describes *as the rudest and poorest of all written languages*. Then, it prescribes laws for the regulation of the intercourse of the people in the common walks of life. Look into the book of Job; to the Proverbs of Solomon, where he speaks of the gold and the tin, and all the valuable metals; look at the book of Ezekiel, the 27th chapter, where you will find enumerated almost all the wares of the present day. There are ships; there is trade and merchandise. In short, it is plainly impossible for any man to look into the Bible, turn up any part of it you please, without being immediately convinced that the people who put forth that Book, did not possess the *rudest and poorest of all written languages*. Without enumerating more of the books in the sacred volume, (for it is a collection of books,) I shall only refer to the book of Kings, in which the royal botanist is said to have spoken of "Trees, from the cedar tree that is in Lebanon, even unto the hyssop that springeth out of the wall; and also of beasts, and of fowl, and of creeping things, and of fishes." Nay, more; these Scriptures are held in such high respect, as containing the most valuable information that can be given to the human race, that we know that societies exist every where, especially through this country, in which there are more persons united of the poorest class of the people than in any other, who are zealously employed in distributing these Scriptures all over the world, and translating them into all the spoken languages; and here I may be allowed to say, that we are a commercial people, that we are, therefore, *as a nation*, interested in the welfare of all the nations of the earth, and that, on that account, I think, this great work should not be left to the unassisted exertions of humble individuals, but that the government should interfere, and take the burden upon themselves. I would call upon the pursuer, to show me where there is one book to be found, which, like this, could be offered to all nations, and be understood by the people

of all languages, containing in itself more correct notions of business, trade, style, imagery, gold, silver—every thing, in short, of which it would be for their advantage to be informed. Yet this is the book, the language of which is described as being “*the rudest and poorest of all written languages.*” The hatred to the language which the pursuer seems to have entertained when he made this remark, could not have been ascribed to the language itself; that could not be, for he seems ignorant of it. It must have arisen, not from this cause; it must have been from something else. What tempted him to *write* this, if he did not mean to *say* so, and when the youngest Hebrew scholar could have contradicted him, is more than I can conjecture, unless it was from the motive which I ascribed to him. It is said that I have accused him of being a member of the infidel sect of Hume. Who was it that went off his way to provoke such a statement? Did he not first attack the language of Scripture in his book, not upon the meaning of the language, but merely as being the language of the Scriptures, as being the language of that people, to whom our Blessed Saviour said, while upon earth, “Search the Scriptures, for in them ye think ye have the words of eternal life, and they are they which testify of me.” And what Scriptures did Christ allude to? Were they the *Samaritan*? No. It was to the Scriptures of the Prophets, and the Psalms—the *Chaldaic*. It could be no other. Now, is it to be tolerated, that the language of these Holy Scriptures should be attacked, as the pursuer has done, and that no man should rise and lift up his voice against it? It was certainly not necessary for “Blackwood’s Magazine” to take up the cause of the Christian faith; it needed no such defence. “The faith of Christ is founded on the rock of ages,” and “the gates of hell shall not prevail against it.” Yet this learned man, calls the “*Revelations*,” contained in these holy books, the “*fancies of St. JOHN*,” not indeed of the *Apostles*, but he refers to the *Apocalypse*, and to the number of the beast. This mathematician, if he had had that regard for the feelings of mankind, and to our holy religion, which he ought to have, would,—like Sir Isaac Newton, and other eminent men, whose names rank higher than that of this pursuer in the scientific world,—have revered as sacred the language of these holy books; and would have behaved much better than he has done, and have done less injury to his own fame, if he had imitated their great example.

Yet this Gentleman prosecutes us here, because we say that he ridiculed the Sacred Scriptures. Was not this writer, was not every person in this country, entitled to take offence at this statement, which described the Hebrew language; which they were required to spend so much of their time in studying, as the *rudest* and *poorest* of all the written languages? I was going to quote to you the testimony of Sir William Jones in favour of this language, which he describes as containing passages of the most exquisite beauty, and in its poetry excelling in grandeur and sublimity any other language that can be written; but your time will not permit me to do so. This is the way in which this learned person speaks of the Hebrew language, and the way in which it has ever been treated and spoken of by all men of science and worth: and yet this professor of mathematics takes upon himself to tell us that it is the *rudest* and *poorest* of all written languages, while the Church of Scotland, again, recommends and requires us to study this language, as the language of that book which contains all that is essential for us to study and to know.

Bishop Beveridge has given us a table of numbers, from 1, 2, 3, &c. down to 100, in the Hebrew, Samaritan, and Greek characters. In that table the Hebrew characters are as distinct from the Samaritan as the Samaritan from the Greek; and yet, Gentlemen, we are here prosecuted for calling that the Hebrew language, which he calls Hebrew. A variety of expressions have been founded upon by the pursuer, by which he says we have injured him in the eyes of the world as a philosopher and a scholar; but, after Sir John Carr's case, which I read to you, I have little doubt you will consider these expressions as nothing more than fair criticism. We have not, as was done in that case, exhibited to the public a picture, in caricature, of Professor Leslie in his study working at an old copy of his *Philosophy of Arithmetic*, and bargaining with a bookseller to take it off his hands and offer it to the public as a new and improved edition of the work; yet I hold we were just as much at liberty to do so, as was done in the case of Sir John Carr. He, Mr. Leslie, went out of his way in his *Treatise on the Philosophy of Arithmetic*, to attack the language of the Sacred Scriptures, and, in ascribing to him the only conceivable motive that could have induced him to do this, I am accused of having said that he was actuated by a dis-

like to the language of Scripture, merely because it was so; and that his conduct was worthy of one of the infidel sect of Hume. If I said this, I was probably not far wrong. Gentlemen, you will perhaps recollect, that several years ago, this learned Professor published a book upon Heat; the book itself is not produced in process; but no matter, the fact that he did so, is matter of history, which cannot be disputed; and, in a note upon that book, he stated what was considered by many to be contrary to the orthodox doctrines of our national church. This was said of him publicly. Nearly one half of the members of the General Assembly of the Church of Scotland said the same thing. This learned gentleman, the pursuer, seems to be rather unlucky in his notes; but on this occasion he escaped the censure of the church, only by a very narrow majority, the votes being 80 to 96. (Mr. Jeffrey called to order, and insisted that Mr. Forsyth was travelling out of the record. Mr. Forsyth thus resumed,) I must say this, that a man who travels out of his way to discourage the study, and throw contempt upon the language, of the sacred Scriptures, by calling it a poor and rude language, cannot complain of injustice, if his writings be treated with that contempt which they deserve. He has treated the Revelation of the holy apostle St. John with ridicule; and he cannot complain if his own works are treated in the same manner.

Having thus got through the heavy part of the case, I shall now advert to some of the remaining circumstances. The pursuer complains that I have called him a "blundering gunner." In that, I really do not see that I have been far wrong, as it is evident that he fell into a mistake in his first statement regarding the Hebrew language, which he has attempted to correct in the second edition of the work. A man who sits down to criticise a language, should certainly know something of that language; and yet I think I have shown pretty plainly that when he wrote this paragraph, the pursuer, Mr. Leslie, did not know the letters of the alphabet. He complains that I call him an "*enfant perdu*," which, in the English translation, means "a skirmisher in the front of the line;" one would suppose that was rather an honourable station to be placed in. (Mr. Jeffrey, not a "*skirmisher*," it means "*forlorn hope*.") The explanation of the word "*enfant perdu*," as given by the French Academy, is, as I have stated, "*a skirmisher in front of the line*," and I trust that you are now satisfied, Gen-

tllemen, that the pursuer, Mr. Leslie, is nothing better than a mere *skirmisher*, when he presumes to attack the Hebrew language. He complains that I have called him “dogmatical and presumptuous.” It is true I said so, and I certainly do think him abundantly so. I am accused also of having said that he is a third or fourth rate mathematician; he may be more for any thing that I know, but that is my opinion, and I have a right to state it to the public. Then, it is said, I have called him a refrigerator of any degree he pleases; why, Gentlemen, he brags as much of his *cooling* as of his *heating* qualities; but all this, and a great deal more, I submit, is within the bounds of fair criticism on the author of a printed work.

In short, the whole case before you is this. The pursuer, Mr. Leslie attacked the language of the holy Scriptures, calling it the rudest and poorest of all languages; I stepped forth and defended it, and for that, and that alone, do I now stand here. He has brought me here by saying that the language of the Scripture is the rudest and poorest of all languages; and I am certainly entitled to defend myself by showing that it is not. I trust that Mr. Leslie has not the monopoly of the free press of this country. Through it he has attacked the language of the Scriptures of truth; and I have defended it, and I hope and trust to find in them, in the language of our blessed Saviour, the evidence of our faith in him as the author of our salvation. The pursuer, Mr. Leslie, has gone out of his way, praising the language of the Greeks, and running down that of the Hebrews, who were the authors of part of the Greek alphabet, and I chastised him for doing so.

I come next to the alleged plagiarism, the issue upon which is in these terms: “It being also admitted, that the fortieth Number of the said magazine, published by the defender at Edinburgh, on or about the month of July, 1820, contains the following words, *viz.* ‘The King of the Cockneys knows no more of Greek than Professor Johnny Leslie does of Hebrew. By the way, on looking over the last number of Dr. Watt’s *Bibliotheca Britannica*, I have discovered, with amazement, that that celebrated personage was a poet in his youth:—why don’t you review his *Phoenix Park*, *Killarney*, &c.? I have copies of both classical productions at your service. Why, finally, did you allow Dr. Brewster to have the merit of pointing out Leslie’s monstrous plagiarism of his theory of heat, from

an old volume of the Philosophical Transactions? For shame.' Whether the whole, or any part of the said words, are of and concerning the pursuer, and falsely, maliciously, and injuriously represent and hold up the pursuer to ridicule and contempt, as being a plagiarist, to the injury and damage of the said pursuer?"

Before proceeding to notice this issue, I may observe, that many questions and disputes have occurred about plagiarism, and where there appears to be no doubt about the originality of an invention, if it is of a useful kind, the party usually takes out a patent, and probably after incurring that expense, discovers that the patent is of no use, as the invention was no new discovery. I mean this remark to apply to profitable inventions chiefly, as to which disputes sometimes occur, and the parties go to law. In the literary world also, discoveries are made which are not always profitable, and disputes frequently occur as to the property; but these disputes should never be made questions in courts of law, and accordingly it is very seldom done; for although the law should say that one or other of the litigants was the original inventor, and although nothing appeared to the contrary at the time, it is very likely, after incurring much expense and vexation in the settlement of the dispute, an old book would give the lie to all. You cannot go to a Jury with such a case. No, Gentlemen, the only way is to go before the public, and state to them the evidence of your being the author, and the public will judge of that evidence. Most of the eminent men of science have been engaged in similar disputes. Newton and Leibnitz carried on a paper war about "fluxions," but they did not go to law. In our own days, we have seen fierce disputes as to the invention of the "safety lamp" to be used in mines. Sir Humphry Davy claimed the honour of that invention, and it is generally believed he had the best right; but others disputed his right to it; yet they did not go to law, or think of claiming £5000 damages against each other, for inventing and making use of a lamp to prevent colliers from being smothered in coal pits. That, however, was a much more valuable discovery than this of "making cold." I wish the pursuer would come and let us see what he can do with it; we have much need of it at present in this hot weather. There was also that very pretty invention of Dr. Brewster's, the "Kaleidoscope;" that perfection of "die-

dies;" but, Gentlemen, it was a very serious matter—a patent was taken out for the invention;—and many people are of opinion, that it is a more useful and pleasant invention than this of the pursuer's, of "making cold." It is not, certainly, entirely useless; it may be very convenient for producing bits of ice for making ice cream in hot weather; but in this climate, we have not always occasion to complain of heat. I have seen no instance of this kind where parties go to law, to claim damages for being deprived of the glory of such a discovery. There was also the discovery of the circulation of the blood; of which, I believe, Hervey first claimed the merit, and yet a learned Rabbi may be found to say, that a respectable minority of learned men will tell us he was not the discoverer of it. There is the case, likewise, of "Ossian's Poems," which was alleged to be a case of notorious plagiarism; it was said to be a translation of M'Pherson's, who was openly called a plagiarist. And there was a dispute also about Allan Ramsay's "Gentle Shepherd," whether it was written by him or not. To the public it was of little consequence who wrote that pastoral; it must have been written by somebody. In none of these cases did the parties go to law.

Gentlemen, this is the first case of such a nature, and I hope it will be the last. In point of law, the action is ill-founded. "I said that his theory of heat was a monstrous plagiarism from Nairne, and I asked the Editor of the Magazine, why he allowed Dr. Brewster to have the merit of pointing it out. Gentlemen, it is not denied that Dr. Brewster did distinctly accuse the pursuer of this plagiarism. If the pursuer could have done so, why has he not denied it? He had it in his power to satisfy you, and to satisfy the public also, on the point, if he had chosen to take the trouble. I gave him Dr. Brewster's name, as the author of the assertion, that he was a plagiarist; and why then, did he not call on Dr. Brewster, and put the question to him, when he would at once have ascertained whether or not he was the author of that charge, and his reasons for saying that he was a plagiarist, if the Doctor himself was the first that said so. Gentlemen, he has not done this, and therefore he cannot come against me on that account. Starkie says in his book, at p. 244, "a person repeating the slander which he has heard from another, will, in some instances, be justified, provided he, at the time of repeti-

tion, declare the name of the person from whom he heard it."

What I said was this,—that Dr. Brewster said the pursuer had borrowed from Nairne's experiment. I did this, not generally indeed; but I gave the name of a man very well known to the scientific world, and a man of great reputation; and I now state to you, that, having done this, the present action against me as to this issue, is wholly irrelevant.

Allow me to make one remark on this point of the case—about "*making cold*." In this particular summer, if one could make the air a little colder, I should be very glad, but in general, we have no reason to complain of heat. A little freezing might do us good at present*. A foreigner, after residing some time in this country, speaking of the climate of Scotland, is reported to have said, that we usually had *nine months of frost and snow, and three of cold weather*. Unless, therefore, the cold could be as easily dismissed as produced, we will probably be as well without it; for I am much mistaken, even after the Union Canal proprietors have expended upwards of £100,000, in making a canal to the westward of this city, in order to bring in coals to Edinburgh, if we do not find it cold enough during the ensuing winter. The pursuer's discovery of the mode of producing cold is merely a philosophical experiment, and cannot be of much general use to us. But please to recollect what this discovery was. It was well known before. I will not say that it was so well performed before Mr. Leslie exhibited it; but Mr. Nairne said that heat was produced, and that cold was produced, in particular situations. In all cases where solid bodies pass into a fluid state, and evaporation takes place, heat is absorbed and cold is consequently produced. It is so in the case of water, and also in the case of ether. Take the example, which is familiar to us all, of a pot on the fire. Put a pot on the fire, and make the fire as strong as you can, and put water into the pot, it won't become red hot so long as there is water in it, because the water being turned into air or vapour, by the action of the fire, carries off the heat from the metal of the pot; in other words, evaporation produces cold. Now all this is well known. Mr. Nairne makes the same experiments that Mr.

* Referring to the heat of the air in the room, from the crowded state of the Court.

Leslie does with the air pump, and Professor Leslie may have been looking to Mr Nairne's account of his experiments, at the time he published his Essay on Heat. I say this much, to justify myself as a critic. The philosophical Transactions of the Royal Society are said to be open to all the world. It is true they are so; but we do not read them. Many learned men have not read them. Professor Leslie might have done so; and I have little doubt that he read in them the details of Mr. Nairne's experiments. But another gentleman might have looked at them, and thought that he saw in Nairne's account the same thing done that was done by the pursuer. Professor Leslie takes out the air from the receiver of the air-pump; he puts in water into a vessel, which he places in the receiver, and he then puts sulphuric acid under it. He draws out the air by working the pump, and the water boils at 120 degrees of Fahrenheit's thermometer; but water boils at a lower degree than 120. De Luc goes to the top of the Alps and makes his experiments, and he there finds in that elevated situation, where the pressure of the atmosphere is much less, that water boils with less heat. Professor Leslie takes the air pump, and he sets in the receiver a basin of water, and puts sulphuric acid under the receiver; he then draws out the air by working the pump, and the water boils. The water rises at 78 degrees less than the temperature of the open air; the steam is taken off in a rapid style; and the heat is reduced in the water below 32 degrees, which is the freezing point. Professor Leslie thus makes ice in a very pretty manner.

Another gentleman hears of Mr. Leslie's experiments. He reads of them in his retirement in the country. He sees that an air-pump is used; and he sees sulphuric acid applied under the receiver. Mr. Nairne, by means of sulphuric acid, took the moisture out of air, which is exactly what Mr. Leslie does. He finds Mr. Nairne taking ether, and putting it into the receiver of the air-pump. He works the air-pump, and takes out the air in the ether. This rapidly takes away the heat, and produces cold; and when the operation is completed, he examines the receiver, and finds ice or frozen ether remaining. One of the witnesses examined this day, told you that Mr. Nairne supposed he had froze ether, but that, in the opinion of the philosophic world, he had only frozen a little water in the ether. This may be all a jest, but so it is; it is pub-

lished to the world. Mr. Leslie publishes a book on the theory of heat ; and a person reading it in the country thinks he has formerly read all this in Mr. Nairne's account of his experiments. He finds the elements are the same in both. Mr. Nairne, it is true, had a different object in view ; his purpose was to endeavour to produce dryness, or cold in ether, and Mr. Leslie had the merit of doing the same thing with water. But he sees Mr. Nairne working in the same way, and with the air-pump. He finds him absorbing moisture from water, and producing ice by drawing off the air, and freezing ether along with it. Now, Gentlemen, *putting that and that together*, he thinks he sees Mr. Leslie *ploughing with Mr. Nairne's heifer* ; and he says so to the world. Dr. Marcet has said that Mr. Leslie was right in his experiments, though he did not understand the mode of its being done at first, and so do I. Mr. Leslie saw then, all the materials of his experiments, as well as their principles, were known before ; and though Mr. Nairne saw them also, he did not *combine* them, but Mr. Leslie did ; and that is the discovery he has made. But though all men must admire it as an ingenious discovery in chemistry, which I also do ; yet I hope you will not say,—although this discovery of Mr. Leslie's was only made in 1810, and I took it upon me to call back the attention of the public to Mr. Nairne's experiments in 1777, and to say that this later pretended *discovery* is a *plagiarism* from an old volume of Philosophical Transactions,—I have done that which is wrong, and that I have attacked the pursuer from envy and malice. I am not surely to be accused of malice for having done this. When I see water, air, ether, and sulphuric acid, used in both experiments, and that Mr. Leslie had no other merit, than in combining them in a different way from what Mr. Nairne did in his experiments, I am not certainly to be accused of malice when I state this to the public, and that I think the one has borrowed from the other. I do this under the liberty of the press, and I am not to be accused for doing so. The pursuer says, I have maliciously attempted to deprive him of the glory of this discovery, and to injure his character, as a man of science, in the eyes of the world. He has made several very handy instruments to be sure ; but am I to be told, that because I said that his combining of two principles in chemistry, which were well known before, was not an original inven-

tion, that such a statement is malicious? I deny that it is so, or that I am covering up and concealing from the world the merits of the pursuer, and giving that glory to another which is due to him alone; or that I have done any thing which entitles him to call for damages from me, merely because he combined what another did not. It is quite unreasonable to accuse me of malice for this. I stated to the public only what Dr. Brewster put into my head. The pursuer, Mr. Leslie, was not actually told by me that Dr. Brewster was the author of my statement of his having been guilty of plagiarism; and it is possible that the writer of the critique, when he mentioned Dr. Brewster's merit in pointing this out, may have been guilty of a similar offence with Mr. Leslie, when he showed his ignorance in asserting, probably on the information of another, that the language of the Hebrews was the rudest and poorest of all written languages. If I acted otherwise, I stated to the public only what I thought of this author and his discoveries: I have not acted contrary to the liberty of the press, nor am I to be accused of malice for doing what I conceive I had a right to do, and what I was legally entitled to do under the liberty of the press.

Gentlemen, in the next issue it is put, whether I have accused the pursuer "as being lying, dishonest, or joining with a bookseller to impose upon the public by dishonesty?" Gentlemen, these words are not to be found in the passage from my critique, quoted in the issues, which you will find runs in these terms, (p. 4.) "As I am on the subject, I may remark, that I was at first a little surprised to find that in the second edition of the *Philosophy of Arithmetic*, which was announced since I pointed out Leslie's mistake, he had not retracted the unlucky note which convicted him of ignorance. But on inspection of the work my wonder ceased; for I perceived that the new edition was nothing more than the old one, with a fresh lying title-page and a few additional leaves; in short, only a collusion between an honest bookseller and a doubly honest professor, to impose on the public, and get rid of the remaining copies of an unsaleable work. Here, then, is the vile offence against decency as committed by me. What reason have I to respect Mr. Leslie? His *Essay on Heat*! The matter of that work is no great affair, and the manner is so bad, that even a brother reviewer pronounces it to be execrable and 'drossy.' His *mathematics*! There is not an original

mathematical fact of the smallest value in all his book ; and his barbarous style and vile arrangement have done a great deal to obscure the merit of what he has purloined. I do not intend, for it would not be the proper place, to go into any detailed remarks on his geometry ; but every mathematician has laughed at his droll proof of the doctrine of parallel lines ; at his doctrine of ratios ; at his failure in proving his very first proposition, the foundation of his system ; and a thousand other such *betises*. Am I to bow to him because he is an Edinburgh Reviewer ? I question the inspiration of that worthy oracle. And as to the Professor's own part in its lucubrations, why, his impudent puffings of himself, and ignorant sneerings at others, have often made me liken Leslie the reviewer, to some enormous over-fed pet of the parrot species, stuck up at a garret window, and occupied all day with saying ' Pretty poll, pretty poll,' to itself, ' Foul witch, foul witch,' to every passer by. Look *now*, I beseech you, at his article on the North-west Passage !!!"

Gentlemen, you have heard evidence delivered on this subject. I gave my reasons for stating this, whether they were good or bad ; I stated them to the public ; and I used some familiarities with the author, as being guilty of a collusion with his bookseller, to impose upon the public by putting a new title-page to an old book, and adding a few additional leaves. This is all I did ; and I say, is not that true ? You have heard the statement of Mr. Miller, a bookseller, who has told you nothing but God's truth ; that it was an imposition upon the public, though it did not impose upon the bookseller. They then call other booksellers, who tell you, that the pursuer and his bookseller put out, as a new edition of his book, the old copies, with a new title-page, and several additional leaves ; and that, for this they charged a higher price, though substantially and truly it was nothing more than the old copies of the book with a few notes. The public would have been imposed upon in this way if I had not put them on their guard. They never could have supposed any thing else than that the author had reprinted the book, and offered it to them as an improved and enlarged edition, when they saw it published in this way. It was not an improved edition ; there was a leaf torn off from the end of the book, and only eighteen pages of notes added ; an addition made to the multiplication table ; and another addition in the preface. The leaf

containing the former preface was torn out in order to add this passage: "In this edition I have introduced considerable improvements. The large multiplication table is now printed in a more convenient form, and other useful tables are inserted in the folding sheet; but the most valuable addition that I have made, consists in the table of quarter squares, near the end of the volume; which, to a certain extent, perform the multiplication of numbers more expeditiously than even logarithms themselves."

I ask whether the public would not believe from this preface that considerable improvements were made on the work? It does not tell all that was done to the book, there were only a few notes added at the end, and an addition to the multiplication table. The booksellers examined before you this day, are honest and fair men, and they have told you that they see nothing unfair or dishonest in all this. Gentlemen, it would seem that there are *tricks in all trades but ours*—we cannot impose upon you, at least in the Jury Court; we must here show you every thing fairly and openly. In all other professions *except* THE LAW, there are tricks in trade—take any other business you please—the "weavers," for example; you will probably recollect the Scotch song written by Burns—

"Willie Wastle dwalt on Tweed,
The place, they ca'd it Linkumoddie,
Willie was a wabster gude,
Cou'd stow'n a clew wi' ony body."

Gentlemen, you have heard it said, "a's fair i' the wabster trade," but yet Willie Wastle was *a thief*. You may also have heard of a clergyman in England preaching before the corporation of tailors, when he chose for his text, these words; "a remnant shall be saved." But would any man venture to say, that all tailors are *honest* men, if they adhere *literally* to that text. If he could, he may say the same of the booksellers. *He may say the same of my client*, Mr. BLACKWOOD. I certainly believe he is *no better than the rest*—they would all try to get off a book with a few notes, as a new edition, if the author were to desire them. I believe, however, that there is only one instance of an *author* lending himself to such a trick, and that was in the case of a lady, who certainly did not understand what she was about; but, Gentlemen, when booksellers take it upon them to say to the public that that is a new edition, which is merely the old copy of a forgotten work, with a new title-page, and a few notes, I tell them they treat me *dishonest*—

ly; and if a book, like this of the pursuer's, be republished with a few additional sheets of paper, and a multiplication table, and called a new edition enlarged and improved, I have no hesitation in saying, that there has been a dishonest collusion betwixt the author and the bookseller to impose upon the public. Mr. Leslie, the author before you, has *let himself down*; in my opinion, in lending himself to this trick, and there can be no justification given of his conduct in this Court. We have all done wrong things in the course of our lives, but nothing of this nature which any man would attempt to justify in a Court. Mr. Miller said that it was an imposition on the public, and that the thing should not be done. To pass off, as a new edition of a work, a few notes, with a new title-page prefixed to an old book which is not saleable, is a mere trick of trade. A *fish-wife* will demand from you 2s. 6d. for what she will the next moment take 9d.; but she belongs to a *privileged class*, of whose tricks and impositions the public are generally pretty well aware. In the present instance, the public could not have suspected any trick. The person making this statement did not mean to refer to the bookseller, but to the book; at same time, I am certain, that if Mr. Blackwood had noticed this remark in the article as to the honest bookseller, when he inserted it in his magazine, he would not have allowed it to go in; nothing, indeed, can justify what is not justifiable in itself, but other authors have been treated in the same way. Savage ridicules Curl, the bookseller, for this trick, in very severe satire; he says that Curl published a book with a new title page to every 500 copies, calling each set of copies a new edition, which Savage treats as a *bookselling trick*, and not to be justified.

I may mention also an attack upon Dr. Gregory—

LORD CHIEF COMMISSIONER.—I am sorry to interrupt you, Mr. Forsyth: the case you are now proceeding to state, is that of another who may have done a wrong; that can be no rule for the Court; stick to your own justification.

MR. FORSYTH.—In page fifth, there is another ground of attack on us. In the third issue, the question is put, whether we have not described the pursuer “as resembling a parrot.” Gentlemen, a parrot is a very beautiful bird; I should have taken such a comparison as a compli-

ment paid to me ; and I do not see why the pursuer should take it so much amiss. It is a prettier animal than either of us. This charge reminds me of the story of the poor Scotsman in London, who called the parrot a "green goose," because it abused his countrymen, by calling nick-names. Sir John Carr was likewise abused in a much worse style than this. It may be supposed, indeed, that I said the pursuer resembled a parrot,—that spoke things it did not understand,—when he called the *Hebrew* language the *Samaritan*.

CHIEF COMMISSIONER.—Mr. Forsyth, you are going wrong again. You are wandering from the libel, and injuring the cause of your client.

MR. FORSYTH.—Gentlemen, I shall read the passage about "Pretty Poll." On page 5th of the issues you will find these words: "Am I to bow to him because he is an Edinburgh Reviewer. I question the inspiration of that worthy oracle, and as to the Professor's own part in its lucubrations, why, his impudent puffings of himself, and ignorant sneerings at others, have often made me liken LESLIE *the reviewer*, to some enormous, over-fed pet of the parrot species, stuck up at a garret window, and occupied all day with saying, 'Pretty poll ! pretty poll !' to itself. 'Foul witch ! Foul witch !' to every passer by. Look *now*, I beseech you, at his article on the North-west Passage !!!" With regard to that, Gentlemen, we have a counter issue. And I own I expected that the pursuer this day would have made an admission, or a denial, that what is here stated as to Mr. Leslie being a writer in the Review, was the fact. *The fact is not denied*, that Mr. Leslie wrote in the Edinburgh Review ; and it is generally known that he was the principal contributor to it.—

CHIEF COMMISSIONER.—Mr. Forsyth, I must stop you again. The libel in question was understood to be a libel upon Mr. Leslie, as an author writing in the Edinburgh Review. Now, he is an *unavowed* author in this work, if he is a contributor to it. Now, in settling the issues, I thought it but just that you should state in the issues, the passages in the Review which you refer to, as having been written by Mr. Leslie, and that you should undertake to prove that he wrote them. And if, in support of your

statement, you should be able to bring forward evidence to satisfy the Jury that the Professor was the author of these passages in the Review, in which he criticises his own works, lauding himself, and running down other writers, then the picture of a bird, applied distinctly in the libel to Mr. Leslie, comes to be a question whether it is fair criticism or not. But you must *prove* to the Jury, that Mr. Leslie is the author of those passages which you so pointed out; and you are not entitled to *assume* an admission of the other party, that he is the author of those passages. Great allowances are to be made for a counsel pleading in defence of his client, but the Court cannot allow the counsel on either side to travel out of the issues.

MR. FORSYTH.—Gentlemen of the Jury, we do not consider this a serious matter by any means. It is a mere jest. You have heard how many such things were said against Sir John Carr and his works, that he was not only alluded to in words much worse than those, but even his person was exhibited in caricature.—

CHIEF COMMISSIONER.—There again you go wrong. The case of Sir John Carr was that of an *avowed* author. There were in that case *avowed* works also. The books criticised were avowed to be Sir John's; and, therefore, the judge was of opinion that the attack made upon those works was fair criticism, and not a libel.

MR. FORSYTH.—Gentlemen, I must now state to you, that there is no help for difference of opinion. Authors and lawyers will differ in opinion, and there is no help for it. I have called this a jest: it is a sorry jest; and *if I had been dealt fairly by*, I could have proved the statements I made.

MR. JEFFREY.—My Lord, I can't bear this. I distinctly call upon Mr. Forsyth to show *how*, and in *what manner*, he has been *unfairly dealt by*. I deny that he has been unfairly dealt by, *by us*; all his witnesses are now inclosed, and he may proceed to prove his statements by them, if he pleases.

CHIEF COMMISSIONER.—Mr. Forsyth, I have felt it my duty, sitting here, to state that you had gone out of the

record. All that the Court requests is, that you confine yourself to the case of your client. The Court has no desire to do you the least injustice.

Mr. FORSYTH.—I admit that, my Lord.

Now, gentlemen, I *have* made this remark about “Pretty Poll,” in reference to the pursuer Mr. Leslie. It is a sorry jest, and I do not think it worth while to go to evidence about the matter. *It is a mere joke*, and we consider it to be so. If the liberty of the press be of any value at all in this country, my having used this squib can be of no bad consequence to the defender. If I have said this of the pursuer, Mr. Leslie, that respectable person cannot qualify any injury that he has sustained by it. And but for this issue, “Pretty Poll” would have been long ago forgot. It is *a mere jest*, and is only of importance as having been brought forward here.

Lastly,—As to the attack upon the University of Edinburgh, that charge will be found on page 6th of the issues. “With grief I have perceived that many of the young men who go from this country to Edinburgh, to pursue their medical studies, come back with their religious principles perverted, and their reverence for holy things sneered away. It would be very unjust to accuse any *individual* of this weighty charge, but the fact is undeniable. I rejoice, therefore, whenever it is in my power, even in the most trivial degree, to show that the lights of the famous Northern Sect are not infallible; that under affected knowledge, gross ignorance may lurk; and that considerable intolerance may sometimes be the characteristic feature of philosophic liberality. I rejoice, also, but much more sincerely, to learn that a better spirit is arising in your famous university; and, in spite of its levity, its humours, its follies, nay, even its transgressions, I think your Magazine has been instrumental in this good work.”

“Whether the whole, or any part of the said words are of and concerning the pursuer; and falsely, maliciously, and injuriously hold out and represent the pursuer as being one of the public teachers, by whom young men, who come as students to the university of Edinburgh, have their religious principles perverted, and their reverence for holy things sneered away, to the injury and damage of the said pursuer?”

Now, in the first place, in my humble apprehension,

the university of Edinburgh is as liable to criticism as the government of a state is; and, so far as it is injured, it may take measures to obtain redress. The pursuer is not entitled to come forward and call upon you to redress such wrongs. The persons noticed in the critique here, are young men coming from Ireland to study medicine,—not natural philosophy; which is not one of the medical classes. The chemistry class is, but Professor Leslie is not the professor of chemistry. To be sure, he comes in for his share of the animadversion upon the university, as one of the professors. Is not a man entitled to go from one climate or kingdom to another to study in the universities. It is well known that in this university, there are students from all parts of the world; and if I, a native of another country, should come to the university of Edinburgh, and go through a course of study, would I not be entitled to say, upon my return home, *if it were the case*, that the students of medicine who come to this university have their religious principles perverted, and their reverence for holy things sneered away. Gentlemen, the writer of this article comes from Ireland: he dates his letter from Dublin, and nothing is said against its being a genuine letter. But whatever the writer of that letter means, it is clear he did not refer to the literary classes *generally*, but to the medical students; and, therefore, it cannot be true that he refers to Professor Leslie, as he is not one of the medical professors. Observe what he says: “It would be unjust to accuse any *individual* of this weighty charge; but the fact is undeniable. I rejoice, therefore, whenever it is in my power, even in the most trivial degree, to show that the lights of the famous Northern Sect are not infallible: That under affected knowledge gross ignorance may lurk, and that considerable intolerance may sometimes be the characteristic feature of philosophic liberality.” *Any individual!* What individual? Any individual professor of the *medical classes*, to be sure, and not you, Mr. Leslie. To be sure, the writer says, “Under affected knowledge, gross ignorance may lurk.” I think gross ignorance did lurk under the pursuer’s affected knowledge of the Hebrew language, and to that extent certainly, the passage may be applicable to Mr. Leslie. Then the writer goes on to say, “I rejoice also, but much more sincerely, to learn that a better spirit is arising in your famous university.” *When* did this better spirit arise? About the time that Professor

Leslie was made Professor of Natural Philosophy; therefore, the writer could not have accused Mr. Leslie of intolerance. Young men do not usually attend those classes of the University which they are not obliged to attend, to prepare them for their future pursuits; and this writer rejoices that a better spirit is arising in this famous University, at the time that Professor Leslie was made Professor of Natural Philosophy; therefore, he could have had no malice against him. I do not think it necessary to go into evidence, but I am happy to learn that the times of prejudice, ignorance, and intolerance, are now gone by.

Gentlemen, where does this case begin, and where does it end. Seriously speaking, it is just here—the pursuer, Mr. Leslie, published a book on arithmetic, in which he goes out of his way to attack the language of our holy religion;—my client stands up in its defence; and, *for doing this*, he stands before you this day. All the rest of the charges are trifling.

The defender declining to adduce any witnesses, the Chief Commissioner addressed the Jury as follows:

CHIEF COMMISSIONER.—Gentlemen of the Jury, it is now my duty to give you such views of this case as may direct you in forming your judgment on the different matters embraced in the issues; and, in doing this, I shall endeavour to lay down and explain the whole to you, in such a manner as, I trust, may be intelligible to you, and in connexion with the libel.

There is what is called a justification on proof of the *veritas convincii*, that is,—where a justification of the libel is offered to be proved.

I shall make this plain to you immediately, and I shall take up the issues in justification of the libel first, leaving the others to the last.

The first justification offered will be found on page 7th of the issues, in these words, “Whether the pursuer held himself forth as the author of certain discoveries in regard to freezing or artificial congelation by means of evaporation under an exhausted receiver; he, the pursuer, knowing or being aware that the same or similar discoveries were previously pointed out, or described, in a paper in the 67th volume of the Philosophical Transactions of the Royal Society of London, entitled, ‘An account of some experiments made with an air-pump, on Mr. Sineaton’s principle;

together with some experiments with a common air-pump.' ”

This is a justification of that part of the libel which you will find on the 4th page of the issues, of which I need not read to you more than a part. It regards what is said about the former productions of this author, Mr. Leslie, which it seems to have been the wish of the critic to take up and criticise. He says, “ Why don't you review his *Phoenix Park, Killarney, &c.* ? I have copies of both classical productions at your service. Why, finally, did you allow Dr. Brewster to have the merit of pointing out Leslie's monstrous plagiarism of the theory of heat, from an old volume of the *Philosophical Transactions* ?—For shame ! ”

What the pursuer, Mr. Leslie, complains of in this article is, that he, holding himself out to the Institute of France—to the Royal Society of London,—in this city and elsewhere, as the author of this discovery, is said, in this article, to have been guilty of a “ monstrous plagiarism ; ” and the author of this critique asks Mr. Blackwood, the defender, “ why don't you, the editor of the *Magazine*, bring forward and review his other works, which are deserving of criticism.” Now, the defender says, that *this is true* ; and he offers to prove his averment, that it is a plagiarism ; and yet he deserts the grounds of it on the trial. The question then is—not if the other party has proved the libel, but whether the libel be false ? Now, if they don't prove a justification, the charge is true, and the libel is false ; the justification has been abandoned by the defender, and this saves the Court, and you, Gentlemen, farther trouble. The case stands thus,—The defence put in, that this is a fair criticism on the pursuer's works, is at an end, and the libel is at an end, and is held to be false ; and this question, therefore, upon the issues, stands in favour of the pursuer. It is satisfactory also to find, that this point is established by the proof led on the part of the pursuer, as detailed in the evidence given by Dr. Thomson, Dr. Marcet, and Dr. Dewar. I shall confine myself to Dr. Marcet's testimony, for all these gentlemen have sworn that they believed at the time this discovery to have been an original invention, and that they still think so. They stated to you what they found in the *Philosophical Transactions* of that period, that the qualities of the bodies mentioned were known to have

existed before,—but that the invention of the pursuer consisted, not in the discovery of these qualities, which were previously known, but in their *combination*. Dr. Mareet particularly states, that a man of a very powerful genius might have entertained such an idea, and might have got to Mr. Leslie's discovery. Mr. Leslie, by meditating on the result of Mr. Nairne's experiments, might have drawn from it the discovery he made; but, if he did, he would have given the greatest proof both of an inductive and inventive genius. He has told you, that the principles and properties of the substances on which this discovery was founded, were known more than sixty years ago by Dr. Cullen, and more than forty years ago by Dr. Blair, and, generally, by the whole philosophic world; but he has said that Mr. Leslie's great inductive genius has accomplished what the whole united science of the age had not done. The pursuer has not left this issue to stand upon an inference of the law merely, but he has placed it besides on sure and solid grounds, by proving the facts. Both the members of the Institute of France, and the members of the Royal Society of London, have published, in their Transactions, the same account of Mr. Leslie's discovery, and have concurred in the opinion of its being original. We have nothing to do with the importance of the discovery, but that the pursuer is proved to be the original inventor. Yet he is called by the defender in this libel a "plagiarist," and the offer made by him to prove that charge is abandoned, while the original invention is clearly proved to have been Mr. Leslie's.

The second justification put in issue, is, that the pursuer is the editor of a book, entitled the "Philosophy of Arithmetic." This issue itself I shall now read to you: "It being admitted, that a book, entitled the Philosophy of Arithmetic, was published by the pursuer in the year 1820, and is described in the title page as a second edition, improved and enlarged, meaning thereby that the said book, described as a second edition, was enlarged and improved in comparison with the first edition of the said book;—Whether the pursuer, with the bookseller, in holding out to the public, the book first aforesaid, as a second edition enlarged and improved, was guilty of a dishonest attempt to impose upon the public."

Now, here is a justification also. The question, on the part of the defender, rests entirely on argument. There is no evidence brought forward of any dishonest attempt,

on the part of the pursuer, to impose upon the public; but the defender's counsel have left it to stand on the appearance of things. Now, see the way in which the pursuer is attacked in the libel, which you will find by referring to the top of the fifth page of the issues, in these words, "But, on an inspection of the work, my wonder ceased; for I perceived that the new edition was nothing more than the old one, with a few additional leaves; in short, only a collusion between an honest bookseller, and a doubly honest Professor, to impose on the public, and get rid of the remaining copies of an unsaleable work. Here, then, is the vile offence against decency, as committed by me."

Now, on this libel arise two inferences, on the expression "honest bookseller, and doubly honest Professor;" and the question is, is it used in a literal sense, or ironically? The question is given up in the issue in justification, where it is stated that by the word "honest," here used, was meant "dishonest;" but the interpretation of it depends entirely on sound common sense, applied to the scope and meaning of the passage, and you will apply it in a proper and legal way.

First, You will consider whether the expression means "*honest*" or "*dishonest*." If it would be absurd to consider the passage in its literal sense, it is your province to draw the proper conclusion. To me it seems absurd to say that when a man is directly accused of putting a *lying* title page to a book, he could be considered as being called an *honest* man.

As to the first page of this book being "a lying title page," you have the evidence of Mr. Tait himself, who was the publisher of it, and of the other booksellers, Mr. Cadell, Mr. Miller, and Mr. Aitken. I throw Mr. Tait's evidence out of the question, because he is the person accused of this dishonest attempt to impose on the public. All the others have stated distinctly, that this copy of the book should be called "second edition." Mr. Miller has given you an instance of this being done with Mrs. Hamilton's works, and Mr. Aitken has done the same as to Ross's works; both of them were called "second edition revised." The book in my hands is called "second edition improved and enlarged." On asking them if there were any particular things which entitled it to be so called—if there were improvements and enlargements made upon it, they have

all said, that there were such as entitled the book to be called by this title. Now, although there may be an inaccuracy in this, (and here, you find it called in the libel a lying title page,)—where are you to go to ascertain in the only way that can be satisfactory to you, whether it be so or not. You can only go to those who are engaged in the trade. The thing stands thus: this was a copy of a book formerly published, newly edited; but then it was so edited, with such additions and improvements, as to satisfy the mind that this cannot be said to be a lying title-page, when it states that the book was ‘improved and enlarged’ I leave this question with you, telling you, not merely that nothing has been proved against the correctness of this title-page, but that no attempt at proof of the justification in the issues has been made, so that this must be held as not being a lying title-page, but a proper title; and if the charge of honesty is considered by you as meaning dishonesty, then the justification upon this issue has failed altogether; and your verdict must be for the pursuer.

The next issue is, as to the pursuer’s ‘being a parrot.’ This refers to articles in the *Edinburgh Review* said to be written by Mr. Leslie. You will find the paragraph to which this issue refers on the 5th page, in these words, “Am I to bow to him because he is an *Edinburgh Reviewer*? I question the inspiration of that worthy oracle.” “And as to the Professor’s own part in its lucubrations.” (This fixes down the reviewer here meant, to be the Professor, whose name is given in what follows:) “Why, his impudent puffings of himself, and ignorant sneerings at others, have often made me liken ‘*LESLIE*,’ *the reviewer*, to some enormous over-fed pet of the parrot species, stuck up at a garret window, and occupied all day with saying ‘Pretty poll, pretty poll,’ to itself, ‘Foul witch, foul witch,’ to every passer by. Look now, I beseech you, at his article on the North-west Passage!!!”

Gentlemen, I have had already occasion to explain the way in which this is done. If a person, without cause, is represented ridiculously, either by a picture or otherwise, there are good grounds of action for libel. As little doubt can be entertained of *this*. If the alleged libel is a fair criticism upon the work of another, however severe, as Lord Ellenborough says, even if the person criticised is represented ludicrously in a picture, if that representation relates to his works, and is published in a criticism upon his works,

it is to be favourably dealt with. But if, without reference to the works, one person puts forth to the public such a ludicrous representation of another, then the libel is considered in law to be malicious and unfounded, and there are good grounds of action.

Now this is the rule of law as to criticism on works. If an author publishes his works to the world, and puts his name to them, it is unnecessary to prove them to be his; they prove themselves; they are not like loose works in a review, or other periodical publication, the writer in which is usually desirous of remaining unknown. But even as to these, if it can be brought home to him that he is the author of the criticisms considered libellous, then the libel contained in it is established to be his; and if it appears, that in such a critique there is contained an assertion, that the author of the works criticised has, in a similar periodical publication, lauded and praised himself in reviewing his own works, while he treats those of other people scornfully, then the defender would be justified in putting in a defence, such as is contained in this counter issue. "Whether the defender, in stating that he had often likened the pursuer to a parrot, meant and intended to allude to and characterize, and did allude to and characterize, the pursuer, solely as the author of the said passages." But there is no such evidence laid before you. The pursuer, Mr. Leslie, stands therefore disconnected entirely with the review; and it is not necessary to inquire whether he was the author referred to in the issues or not; the defender has abandoned his proof in this issue, and has abandoned his justification; and therefore, on this issue you can only come to one conclusion, and that conclusion is in favour of the pursuer. The law admits of nothing else, and besides, the facts in this case, as proved by the pursuer, coincide with the law, and make assurance doubly sure.

I have gone into these issues at greater length than may seem to have been necessary; but the remaining parts of the case are of the deepest importance, and therefore I beg your attention to them.

This may be said to consist of matter which is critical, consisting of four branches:—*1st*, Of matter where it is *doubtful* to what class it belongs; *2d*, To matter where it is difficult to draw the line where libel begins, and where it ends; *3d*, Where the defender has abandoned all notions

of fair criticism, and has descended to personal abuse; and 4th, What is fair and manly criticism, and under the protection of law. These questions have already occupied a great part of the time of the Court in this case, in its previous stages. In a case also where Leitch and others were defenders, and the schoolmaster of Bathgate pursuer, the Court paid much attention to this matter. I need not refer to authorities in the English Courts; the law on this point may be stated in one sentence. No judge was ever clearer in his views of it than my Lord Ellenborough; and none was ever more anxious to preserve the rights of free and fair criticism by means of the press. He states distinctly, that fair criticism, however severe and sarcastic, although the critic should be mistaken in point of fact in many things, if the criticism be upon a published work, the jury must take it as within the bounds of fair criticism. The law is clear on this point in both ends of the island. Libel or no libel, is a question of law, and the jury take their directions in that respect from the Court. When the question arises on the import of words, it is left to the jury to decide upon the facts, and the plain and obvious meaning of the words. Having stated this, I am under the necessity of reading to you the words of the issue. They will be found on page 4th, in the following terms:—

“ Mr. Editor, In a trifling composition I sent you some time ago, it was asserted that Professor Leslie had thought proper to pass a heavy censure on the Hebrew language, in his *Philosophy of Arithmetic*, though, as I added, it could be proved from his own writings, nay, from the very passage that contained the charge, that he is ignorant even of the alphabet of the language on which he thus presumed to offer an animadversion. The professional *dictum* alluded to, is this: The Oriental nations appear generally to have represented the numbers as far as one thousand, by dividing their alphabet into three distinct classes; but the Hebrew, *the rudest and poorest of all written languages*, having only twenty-two letters, could advance no farther than 400; and to exhibit 500, 600, 700, 800, and 900, it had recourse to the clumsy expedient of addition by joining 400 and 100, 400 and 200, 400 and 300, 400 and 400, and 400 with 400 and 100.”

Gentlemen, you have had very sensible and able evidence laid before you this day, on this point: first, You had that of the Rev. Mr. David Dickson; and secondly,

of the Rev. Dr. David Scott. These reverend and learned gentlemen made this matter perfectly intelligible. There are *two* kinds of Hebrew character, the Samaritan or Phenician, and the Chaldaic. The Samaritan or Phenician alphabet contains twenty-two letters, and the Chaldaic, in addition to the twenty-two original letters, added five final letters. Now, Gentlemen, you will observe, that the pursuer, Mr. Leslie, in his book on the Philosophy of Arithmetic, is pursuing the chronological deduction of the mode of notation among all nations; and, in the course of his work, he makes this commentary upon the Hebrew language. Now, in pursuing this course of inquiry, what did he naturally look to? He looked to that language which was first in the order of time; he looked to the *Samaritan*, or ancient Hebrew, and he found that the Samaritan alphabet contained only twenty-two letters. So far as this goes, the statement in his work was correct; but then, he added these words which lay the foundation of this libel, and all that is built upon it. "The Hebrew language, the rudest and poorest of all the written languages, having only twenty-two letters, could advance no farther than 400; and to exhibit 500, 600, 700, 800, and 900, it had recourse to the clumsy expedient of addition, by joining 400 and 100, 400 and 200, 400 and 300, 400 and 400, and 400 with 400 and 100."

Now, Gentlemen, the evidence does not go to establish this to have been the case. The meaning of the words used is, that the Hebrew language is *rude* and *poor*. Taken without reference to the meaning and object of the publication in which it stands, is it to be considered as a rude and poor language in general? Mr. Dickson and Dr. Scott say that it is not, but that it is, in a high degree, a philosophical language; and therefore, when Mr. Leslie said what he stated in this note, he was giving good and solid grounds of criticism; and it is for you, Gentlemen, to judge where the author of this stricture deviates from the rules of fair criticism. And here I shall only say, of the style of this writer's critique, that it is very severe; it contains nothing classical; and, if it be not protected by the favour of law to bold criticism of a published work, it is conceived in a style of language approaching as near to malice as any thing of this kind I ever read. Yet, Gentlemen, if you are of opinion that the writer of this article is only exercising an undoubted right, and is here performing the office of a

protector of letters,—however strong the language he uses may be, you will take it as a free and fair criticism. If you check such strictures in one case, others will be deterred from undertaking such an office, which has been the great instrument, through the medium of a free press, of our acquiring that accuracy of language—that taste for poetry—that regard for truth and purity of manners, which have brought this favoured country to the highest pitch of elegance and refinement.

The critique then goes on, “The rudest and poorest of all written languages? By my troth, Mr. John Leslie, these be bitter words; but the latter part of the sentence, by displaying the utter ignorance of the Professor, happily renders the railing of the former perfectly innocent. Indeed, so much ignorance and impertinence combined, will hardly be found in so short a compass in the works of any other writer of the smallest literary character. The merest smatterer in Hebrew—any one who had read the first page of the grammar, could have informed Mr. Leslie that the Hebrews had *not* recourse to the clumsy expedient of which he accuses them, and that their alphabet supplied them with characters sufficient for expressing numbers as far as a thousand. It is clear that the Professor was totally unacquainted with the letters of the language he was criticising, or he would have known that the five finals, (technically called *Camnephatz*,) are used to express the five last hundreds; and, therefore, that the glory of inventing the expedient which he describes with such imposing minuteness of detail, is due entirely to himself. So much for his qualifications to decide on the merits of the Hebrew.”

Now the evidence given as to the Samaritan language, which appears to have been the ancient Hebrew referred to by the pursuer, goes to this,—that it did not contain the five final letters found in the Chaldaic character; yet, I cannot tell you that this passage is not within the limits of fair criticism; and, in the other end of the island, a Judge would have no hesitation in directing a non-suit. The libel goes on, “But it appears to me that he has a particular pique against the language; that his censure arises as much from spleen as ignorance; for the Roman method of notation is still more clumsy than his fancied Hebrew System.” “They may be Arabic also; but to enter into the controversy respecting the superiority of Hebrew and Arabic for the edification of Professor Leslie, would be as profitable

as to set about demonstrating the seventeenth proposition of Euclid's twelfth book, to a person who did not know a right line from a curve, much less a polyhedron from a sphere! We must look, therefore, for some other reason; and perhaps we may find it in the unhappy circumstance in which Hebrew is placed,—it is the language of the Old Testament. The language, as a philosopher like Mr. Hume, or a partizan of Mr. Hume's, would say, dedicated to superstition; and is, therefore, like every thing else connected with such a cause, to be attacked by that tolerant and equitable sect, *per fas et nefas*. But in doing so, I may be permitted to remark, there should be some little knowledge of the ground displayed. It is not good generalship to entrust even the details of a siege to a blundering gunner or a rash volunteer; and I must consider the Professor as a most unfortunate, though perhaps courageous *enfant perdu*, after this specimen of his skill, although he may be enlightened enough in other respects to be entitled to sneer at the credulity of Luther, the Dreams of the Christian Fathers, and the fancies of St. John." "He may believe when I tell him, that in the eyes of those who know any thing on the subject, he makes as awkward a figure as the most deficient digit he ever 'caused modify.' He may also assure himself that the rule *ne sutor ultra crepidam*, is truly a golden one. He is perhaps a mighty respectable third or fourth rate mathematician, a refrigerator of any rate he pleases, and an arithmetician scarcely second to Cocker himself; but when, on the strength of these qualifications, he thinks fit to step into philosophy, or to invade the province of critics and scholars, nothing can be more pitiful. And yet, (p. 232,) he blames Joseph Scaliger, (whose name as a man of learning is *rather* higher than Mr. Leslie's as a mathematician,) for quitting his usual studies to meddle with mathematics. So easy it is to perceive the presumptive dogmatism of another, and to overlook our own." And then the issue concludes thus: "Whether the whole or any part of said words, are of and concerning the pursuer; and whether the pursuer is therein falsely, maliciously, and injuriously represented, and held up to ridicule and contempt, as ignorant of the Hebrew language, and even of the Hebrew alphabet, or as being guilty of impertinence, or of disliking the Hebrew language, merely because it is the language of the Old Testament, and to be attacked *per fas et nefas*, or as being an *enfant perdu*, to

the injury and damage of the said pursuer." Then it goes on to say, (a little past the middle of the fourth page: "In a work of his, treating on arithmetic, that 'celebrated' man thought proper to go out of his way to revile in a most dogmatic and insulting manner, the Hebrew language. I asserted that he did not know even a letter of the tongue he had the impudence to pretend to criticise, and I proved my assertion. I leave the decision of the question to any Hebraist,—to any man of common sense in the land." All this may be said to be fair criticism, but then he goes on: "I *proved* that he was actuated by a hostility to the language of Revelation, simply because it was so, and I defy any one to refute me."

Now, combining this passage, with a passage in the first issue, it appears to me that this was dictated by spleen against the man, and that the criticism arose as much from that cause, as from a desire to exercise the rights of fair criticism and discussion. He there says,—“We must look, therefore, for some other reason, and perhaps we may find it in the unhappy circumstances in which the Hebrew is placed; it is the language of the Old Testament. The language, as a philosopher like Mr. Hume, or a partizan of Mr. Hume's, would say, dedicated to superstition, and is, therefore, like every thing else connected with such a cause, to be attacked by that tolerant and equitable sect *per fas et nefas*.” And “I *proved* that he was actuated by a hostility to the language of revelation, simply because it was so, and I defy any one to refute me.” Now, that the writer of the libel *asserted* all this, is true; but, that he *proved it to be true*, remains yet to be seen. It remains to be proved that the pursuer was hostile to the Hebrew language, *merely because it was the language of the Old Testament*, and that he *sneered* at the credulity of Luther, the dreams of the Christian fathers, and the fancies of St. John.

Here the libel begins; and here the line of demarcation is perfectly clear; and it is impossible to say that this part of the libel is correct in any point of view, unless this statement be made out by evidence. Is there any thing in evidence that goes to show, that the pursuer was actuated by the motives here stated, at the time he wrote his book, especially if the object for which he wrote,—the tracing of the progress of notation, be taken into consideration? I think not. Nay more, if the defender could have proved.

in general, that the author of that book upon arithmetic was a *professed infidel*, as were Lord Bolingbroke and Voltaire, this libel might be considered as fair criticism, but otherwise it must be considered as a libel, because it attributes motives to the pursuer, which the author of this criticism was not entitled to do. Now, Mr. Leslie has published no work in which it is alleged, far less proved to you, that he has undervalued and sneered at the religion of Christianity, or any thing of that kind. It might have been fair criticism, if, in the infidel works of Bolingbroke or Voltaire, there had been found such a passage, but it cannot be considered so here.

I now call your attention, Gentlemen, to another passage. You have seen from the evidence, that Mr. Leslie held the Greek language in high estimation. Improper motives have been ascribed to him; he has been accused of undervaluing the Hebrew language, because it is the language of revelation. Now, was a person holding such an opinion of the Hebrew language likely to have expressed himself as the pursuer has done in regard to the Greek language? The Greek language, it has been shown to you, is the language of revelation, above all others. It is in it that all the revealed religion of the gospel is written. It is not in the Hebrew language that the prophecies and the books of Moses are put into the hands of the youth of our universities, but in the Greek, which the pursuer so highly eulogizes; and how Mr. Leslie, had he been a scoffer at religion, could have drawn such conclusions from the Hebrew language as he has done, in the note upon his book, if he had intended to refer to the *Greek*, or what is *now* the language of the Hebrew Scriptures, I own I cannot understand. It is now left to you to draw your own conclusions, whether or not the pursuer was likely to have made such an observation as he has done, from a dislike at the language of revelation, merely because it was so.

Now, there is another passage, which I request you will attend to, at page 227 of the body of the work on arithmetic, published by the pursuer. On this part of the case, I must again refer you to part of the defender's publication as stated in the issues. The terms of the libel are—"I must consider the professor as a most unfortunate, though perhaps courageous *enfant perdu*, after this specimen of his skill, although he may be enlightened enough in other respects to be entitled to sneer at the credulity of Luther,

the dreams of the Christian fathers, and the fancies of St. John." This refers to the historical note to be found in the pursuer's book, to which I have referred, and in which he mentions the probable views of Pythagoras, in the introduction of the mystical numbers of the east, and then, after describing the properties of those numbers, he goes on thus, at page 229.—“ But it would be endless to recount all the visions of the Pythagorean school ; nor should we stop to notice such fancies, if, by a perpetual descent, the dreams of ancient philosophers had not, in the actual state of society, still tintured our language, and mingled themselves with the various institutions of civil life. The mystical properties of numbers, originally nursed in the sombre imaginations of the Egyptians, were eagerly embraced by the Jewish Cabalistic writers, and afterwards implicitly adopted by the fathers of the Christian church. But those fancies maintained an ascendancy in public belief, until a very late period, nor were the reformers themselves exempt from their influence.”

Now, who were the fathers of the Christian church ? They were men like ourselves ;—they were not inspired persons, nor were they persons whose doctrines were not to be impugned, and perhaps the impugning of their doctrines was the ground of the reformation which took place in our Protestant church. Then the passage goes on : “ Luther, whose vigorous mind was yet deeply tintured with the credulity of his age, was accustomed to venerate certain numbers with a species of idolatry. Peter Bungus, Canon of Bergamot, published, in 1585, a thick quarto, *De Mysticis Numerorum significationibus*, chiefly with a view to explain some passages in the Old and New Testament. But it was from Calvin, not Luther, that the faith of the church in this country was derived.

Then he refers to the “ mark of the beast,” and I call your attention to this last passage. “ The famous number of the Beast, 666, which has so often tortured the ingenuity of the expounders of the Apocalypse, is regarded by some divines as of Egyptian descent, the archetype of the three monads, and combining the genial and siderial powers, being, indeed, only the sum of all the terms of the magic square of 6, the first of the perfect numbers, and dedicated to the sun. But we still see the predilection for Luther's favourite number, *seven*, strongly marked in the customary

term of apprenticeships, in the period required for obtaining academical degrees, and in the legal age of majority."

The "Apocalypse" is the only word to be found in this passage. Its meaning signifies the "Revelation," viz. of St. John; and if his remark contained a reflection of an irreligious cast, it would be the foundation of an action for libel. He is said to be accused of sneering at the dreams of the Christian Fathers—Who were the fathers of the Christian church? They were divines,—the same as the reverend and learned gentlemen whom you saw here to-day,—whose especial duty it was to expound and criticise, in their writings, the language and doctrines of the whole of the divine oracles, and not that of the Apocalypse merely. The defender should have taken an issue in justification on this part of the case, and have shown you here, that the language of the Hebrews, which the pursuer attacked, was the language of the "Revelations,"—the Greek, which the pursuer had treated scoffingly; but he has not done so.

I have thus gone through the whole case. I have also looked into Mr. Leslie's book, part of which I confess I do not understand. There is one passage, however, to which I would call your attention: Alluding to the mode of computation by hundreds among the Greeks, the pursuer, in his book, at page 223, quotes four lines from Juvenal, describing the mode in which the aged Nestor counted hundreds upon his *right* hand*; and he quotes also several expressions from Cicero. And then, at page 224, he says, "Some commentators would even explain from the same practice of numeration, the allegorical description of wisdom in the Proverbs of Solomon: 'Length of days is in her right hand, and in her left hand riches and honour.' Prov. iii. 16." Now this quotation appears to me to be in a spirit and character which gives a direct contradiction to the assertion that there is any thing in this work reflecting on the language of revelation. If Professor Leslie never did so,—and we must take it for granted that he never did, because we have no proof to the contrary;—the

* Rex Pylius (magno si quicquam credis Homero)
Exemplum vitæ fuit a cornice secundæ.
Felix nimirum, qui tot per secula mortem
Distulit, atque suos jam *dextra* computat annos.

JUV. Sat. x. 246.

charge in the libel, that this passage, which has been so much commented upon, was put down in his book, because he had a spite at the language of revelation, must be set down as not true. I told the counsel, when the case was before me in adjusting the issues, that I would deliver such an opinion upon the law of the case, when the issues came to be tried, if no such proof was led; and if that opinion should be considered by the counsel to be erroneous, they could take a bill of exceptions to your verdict on the ground of misdirection in point of law: and I now state the same thing over again, that there may be no mistake; and that the Court is of opinion, that the *first* part of this stricture upon the pursuer, is matter of *fair criticism*, and within the bounds of free discussion of a published work;—but that the *last* part of it is a *libel*.

This is not all. I should lay down the law to you also, as to authors and publishers of printed works. If a publisher gives up the name of the author of a printed libel, when he is called upon to do so, that puts an end to the presumption of malice on the part of the publisher, and leaves it to the person libelled, to find out the author of the libel;—but, if the publisher does not give up the author, then the publication is the vehicle of conveying and circulating, through the minds of the public, the venom in the libel; and the law says, in that case, that the publisher is the author. And here again, the party may take a bill of exceptions against this part of the charge, on the ground of misdirection in point of law, if he pleases.

Here, again, the defender has abandoned his plea in justification. The question is put to you in the issue, on page 7, as to the libel containing no attack whatever on the pursuer, as a man or as a professor, in these terms: “Whether the whole, or any part of the said words, are of and concerning the pursuer; and falsely, maliciously, and injuriously hold out and represent the pursuer as being one of the public teachers, by whom young men, who come as students to the University of Edinburgh, have their religious principles perverted, and their reverence for holy things sneered away, to the injury and damage of the said pursuer?”

On this point, the words I refer to will be found at the bottom of the fourth page of the issues. The words complained of by the pursuer are contained in the *four* numbers of the Magazine specified in the summons; and it is of

importance for you to observe, that the whole of the paragraphs in these *four* numbers of that periodical work, are repeated in one article on the 208th page of the 44th Number of the Magazine; and on the article in this Number, therefore, I shall make my observations. You there see, at the commencement of the paragraph in which the subject of the libel is introduced, that the writer of it speaks of his correspondence with the editor, and of his satirical strictures on the pursuer. These are contained in a series of essays on Mr. Leslie's publications, which may be compared in their manner, though the matter of them be different, to Addison's Essays on "Milton's Paradise Lost." They are scattered throughout the pages of different numbers of the Magazine, but, in the eye of law and of reason, they are one and the same work. They attack Mr Leslie's publications, from the commencement of his original works. It is of importance that you remark the paragraph which begins at the last line of the left hand column of page 209. of the 44th Number of the Magazine, which I now hold in my hand. It begins thus—"With grief I have perceived"—but before I read that paragraph to you, I would call your attention to what he says in the one that goes immediately before it, which is in these terms—"What other claims to respect he possesses I know not, except his having made some neat second rate chemical experiments, and invented some handy little instruments; but even if his claims were ten times as weighty, they should not have deterred me from speaking as I thought. A man who could go out of his path, in an inquiry on the nature of heat, to recommend an impious work, and, in a treatise on arithmetic, to cast an ignorant sarcasm on the language of the Bible, or to sneer at the 'fancies' of one of the apostles, must ever be an object of suspicion to those who hold the Scriptures in honour, and impiety in detestation. We have no assurance that he may not digress as culpably hereafter; and if he does so, it is only fair to give him warning, that I shall take care to point it out."

"With grief I have perceived," (this, you will observe, gentlemen, is the commencement of a new paragraph, and it is of importance to notice that it immediately follows the other I have now read,) "that many of the young men who go from this country to Edinburgh to pursue their medical studies, come back with their religious principles perverted, and their reverence for holy things sneered away.

It would be very unjust to accuse any *individual* of this weighty charge,—but the fact is undeniable. I rejoice, therefore, whenever it is in my power, even in the most trivial degree, to show that the lights of the famous Northern Sect are not infallible; that under affected knowledge gross ignorance may lurk; and that considerable intolerance may sometimes be the characteristic feature of philosophic liberality. I rejoice also, but much more sincerely, to learn, that a better spirit is arising in your famous university; and, in spite of its levity, its humour, its follies, nay even its transgressions, I think your magazine has been instrumental in this good work.”

Now, Gentlemen, you will observe that, in the preceding paragraph, the pursuer is attacked as *sneering* at the “fancies” of one of the *apostles*, and is held out as *an object of suspicion* to those who “hold the Scriptures in honour, and impiety in detestation;” and then this paragraph—in which the charge is contained, of the religious principles of the students being perverted, and their reverence for holy things *sneered* away,—follows immediately afterwards, and in connexion with the other, and in this it is said—“It would be very unjust to accuse any ‘*individual*’ of this weighty charge,”—the word “*individual*,” you will remark, is printed in italics,—“but the fact is undeniable.”

Gentlemen, it was an admirable rule of my Lord Mansfield’s, and, after him,—I thought it *my* duty to take down his words as they were spoken at the time, and I think I can give them to you from memory,—Mr. Justice Buller, a very eminent judge, laid down the rule of law in the same terms:—That great lawyer said, “I always observe it as a rule to charge a jury to consider a libel in the same way as a man of common sense and understanding would do, and never to deviate into nice distinctions about the meaning of words, but to be guided in their judgment by good sound sense.” THAT I NOW SAY TO YOU. But there is another *dictum* of my Lord Kenyon’s, which I must also state to you, and it is equally short—That expressions used in writings are to be judged of by their context; “*noscitur a sociis*.” The *matter* of the paragraphs I have now read to you is respecting the *impiety* of the person who is thus charged in the libel; and on this point I call your attention to the statement in the defence, where it is said,—“If the passages had been set forth, it would appear that there is no attack whatever on the learned pursuer, as a *man*, or

as a *professor*. The remarks of which he complains are directed against him in his character of an *author*, and are all confined to observations suggested by his publications."

Gentlemen of the Jury, it is for you to judge of this. It has been stated to you from the bar, on behalf of the defender, that it is the COLLEGE OF EDINBURGH only that is attacked, and if its learned Professors think this a libel, the *College should take it up*. If this be a libel upon the College, it is a very grave one. If it be on the College, I do not choose to enlarge upon it. The pursuer, Professor Leslie, does not take it up as such; but the libel itself does say, that "many of the young men who go from this country (Ireland) to Edinburgh, to pursue their medical studies, come back *with their religious principles perverted*, and their *reverence for holy things* 'SNEERED' away"—and when it also says, that "it would be very unjust to accuse any '*individual*' of this weighty charge—but the fact is undeniable;" it is for you, Gentlemen, to decide, whether the pursuer, Mr. Leslie, is the "individual" here alluded to or not. You will take all the circumstances together; you will recollect that "*sneering*" is the word used where the libel charges the pursuer with having stepped out of his way to "cast an ignorant sarcasm on the language of the Bible, or to *sneer* at the '*fancies*' of one of the Apostles;" and here the same word "*sneered*" is connected with the students at this college, whose religious principles are said to be perverted, and their reverence for holy things *sneered* away; and it again, is also connected with the word "individual," who is accused of this mighty charge. There is a kind of apostrophe, or break in the sentence; and then comes the word "*honest*" in another part of the libel, clearly meaning "*dishonest*," which is directly applied to the pursuer *as a Professor*. Gentlemen, taking all these circumstances together, it is for you to say, could the word "individual" have been introduced into this libel by the writer of it, if no individual Professor was meant; or, is it introduced into the libel, with *reference* to some individual Professor, and by a particular mark. And, if you come to the latter conclusion, whom does it mean? Which of the Professors of Physic, or Moral Science, is it that is here alluded to? If you are of opinion that this has been said of a particular individual, and of Professor Leslie as that individual, then it follows that you will find a verdict for the pursuer on this issue. But if you find that this word "individual" was an *useless*

word, and introduced into the libel without meaning any one, at least, that it did not mean the pursuer, then you will find on this issue that this is not a libel on the pursuer, and you will find a verdict for the defender. You can apply your own common sense and sound understandings to this matter, as effectually, perhaps more effectually, than persons of greater learning and more scientific minds can possibly do.

Gentlemen, I have now done, except as to the damages, and on that point I shall be brief. As to the *three first* issues, the Court is of opinion, that they are legally made out in *favour of the pursuer*; but as to the *first* issue, there is a *part* of that issue about the pursuer's having a *pique against the Hebrew language*, arising as much from spleen as from ignorance, on which the Court thinks you should find in *favour of the defender*—but from thence, where the issue refers to the pursuer's having a prejudice against the Hebrew language, arising out of the unhappy circumstances in which it is placed, as being the language of religion, and of the Old Testament, and ascribing improper motives to the pursuer for his attacking it,—the Court are of opinion, that the words of the libel given in this part of the issue, are not to be ascribed to fair criticism, and are not entitled to the protection of the law, unless they had been warranted by the general character, or by the works, of the pursuer, Mr. Leslie, and therefore, as to this part of this first issue, the Court thinks your finding should be *for the pursuer*. Here again the party may take his bill of exceptions, if he thinks proper, by means of which the decision you may give on this point, may be taken to the Court of Session, and from that Court, even to the House of Lords, by an Appeal.

As to the concluding part of this issue, where the libel holds out the pursuer as the person by whom the students of medicine at this university are said to have their religious principles perverted, and their reverence for holy things sneered away; it is for you, Gentlemen, as I have already stated, to make up your own minds, and this you will do according to your own good sense and sound understanding of the words used.

Gentlemen, I have no more to say.—It is emphatically your province, as jurymen, to assess the damages. If you find the issues, or part of the issues, proved, and that the matter referred to in what you find so proved, is of and concerning the pursuer, and that it is libellous, then you will find such

damages due, as you, in the exercise of sound sense, shall think will be sufficient to compensate the party for the injury he has sustained. This is a case for damages, if you find it proved on the issues, as I have pointed out; and it is especially a case for damages, if you find for the pursuer on the latter part of the first issue, because the opinion of the Court is, that that latter part, if proved, is a case for damages.

Or rather, if you come to be of the same opinion with the Court, and also, that the *fourth* issue is proved, you will find for the pursuer on all the issues, excepting that part of the first issue which I have pointed out; the issue in justification being given up.

MR. FORSYTH.—My Lord, we did not give up the issues in justification, though we did not lead any proof. We argued upon them, and we cross-examined the pursuer's witnesses, in order to prove those issues.

CHIEF COMMISSIONER.—Mr. Forsyth, I gave all due consideration to that part of the evidence in my charge to the jury.

MR. FORSYTH.—We must take a bill of exceptions, of course.

The jury then retired, and remained inclosed for an hour and a half, when they returned, and gave in their verdict, as follows:

VERDICT.

Edinburgh, 22d July, 1822.

On the First Issue, the Jury find for the defender to the words, "We must look," in the seventh line of page 3. of printed Issue. To "He may," in the twenty-first line, for pursuer. And the remainder for the defender.

On the Second and Third Issues, for pursuer.

On Fourth, for the defender.

Damages, £100.

MR. FORSYTH, after the verdict was read by the clerk, tendered a Bill of Exceptions for the defender, on the ground of misdirection, in several instances ; but this Bill appearing to the Court to be in some respects erroneous, liberty was given to the party to withdraw it, and substitute another Bill, to be afterwards lodged.

NOTE of BILL of EXCEPTIONS given in by the Defender, *in causa* LESLIE *versus* BLACKWOOD.

EXCEPT to that part of charge which directed Jury to find part of Issues—first and third—to be libel, and not criticism.

And to that part of the direction which stated, that as no evidence had been brought forward directly by the defender, but merely a cross-examination of pursuer's witnesses, and in writings produced for pursuer, the defender must be held to have abandoned all his Issues in justification ; and also in so far as it was stated, that taking Issues in justification implies, or admits, the relevancy of the charge made by pursuer as a libel.

(Signed) J. S. M.



University of California
SOUTHERN REGIONAL LIBRARY FACILITY
305 De Neve Drive - Parking Lot 17 • Box 951388
LOS ANGELES, CALIFORNIA 90095-1388

Return this material to the library from which it was borrowed.

3 1158 00515 2425

K
39
S931t
1822

DN

UC SOUTHERN REGIONAL LIBRARY FACILITY



A A

001 413 206

2

